

JPRS 74085

27 August 1979

Translation

HUNGARIAN PENAL CODE

FBIS

FOREIGN BROADCAST INFORMATION SERVICE

NOTE

JPRS publications contain information primarily from foreign newspapers, periodicals and books, but also from news agency transmissions and broadcasts. Materials from foreign-language sources are translated; those from English-language sources are transcribed or reprinted, with the original phrasing and other characteristics retained.

Headlines, editorial reports, and material enclosed in brackets [] are supplied by JPRS. Processing indicators such as [Text] or [Excerpt] in the first line of each item, or following the last line of a brief, indicate how the original information was processed. Where no processing indicator is given, the information was summarized or extracted.

Unfamiliar names rendered phonetically or transliterated are enclosed in parentheses. Words or names preceded by a question mark and enclosed in parentheses were not clear in the original but have been supplied as appropriate in context. Other unattributed parenthetical notes within the body of an item originate with the source. Times within items are as given by source.

The contents of this publication in no way represent the policies, views or attitudes of the U.S. Government.

PROCUREMENT OF PUBLICATIONS

JPRS publications may be ordered from the National Technical Information Service, Springfield, Virginia 22161. In ordering, it is recommended that the JPRS number, title, date and author, if applicable, of publication be cited.

Current JPRS publications are announced in Government Reports Announcements issued semi-monthly by the National Technical Information Service, and are listed in the Monthly Catalog of U.S. Government Publications issued by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Indexes to this report (by keyword, author, personal names, title and series) are available from Bell & Howell, Old Mansfield Road, Wooster, Ohio 44691.

Correspondence pertaining to matters other than procurement may be addressed to Joint Publications Research Service, 1000 North Glebe Road, Arlington, Virginia 22201.

REPORT DOCUMENTATION PAGE		1. REPORT NO. JPRS 74085	2.	3. Recipient's Accession No.
4. Title and Subtitle HUNGARIAN PENAL CODE			5. Report Date 27 August 1979	6.
7. Author(s)			8. Performing Organization Rept. No.	
9. Performing Organization Name and Address Joint Publications Research Service 1000 North Glebe Road Arlington, Virginia 22201			10. Project/Task/Work Unit No.	
			11. Contract(C) or Grant(G) No. (C) (G)	
12. Sponsoring Organization Name and Address As above			13. Type of Report & Period Covered	
			14.	
15. Supplementary Notes Budapest MAGYAR KOZLONY, 1978				
16. Abstract (Limit: 200 words) This report contains the newly published Hungarian Penal Code. The purpose of this law is to provide protection against acts dangerous to society, to teach people to observe rules of a socialist society and to respect the law. The law defines offenses and penalties.				
17. Document Analysis a. Descriptors HUNGARY Penal Code Law Criminology				
b. Identifiers/Open-Ended Terms				
c. COSATI Field/Group 5D, 5K				
18. Availability Statement Unlimited Availability Sold by NTIS Springfield, Virginia 22161			19. Security Class (This Report) UNCLASSIFIED	21. No. of Pages 813
			20. Security Class (This Page) UNCLASSIFIED	22. Price

27 August 1979

HUNGARIAN PENAL CODE

Budapest MAGYAR KOZLONY in Hungarian 31 Dec 78 pp 1047-1262

[Text] Main Part I.

Law

Law No. 4 of the Year 1978 Concerning the Penal Code

General Part

The Purpose of the Penal Code

Paragraph 1. The purpose of this law is to provide protection against acts dangerous to society, to teach people to observe the rules of living together in a socialist society, and to respect the law. In the interest of this, [this law] defines the offenses and the penalties and measures which can be applied against those who commit them.

CHAPTER 1.

The Effect of the Penal Code

Effect in Terms of Time

Paragraph 2. The offense must be judged according to the law in effect at the time it is committed. If according to the new penal law in effect at the time the action is judged the action is no longer an offense, or is

to be judged more leniently, then the new law must be applied; otherwise the new penal law has no retroactive effect.

Effect in Terms of Location and of the Person

Paragraph 3. (1) The Hungarian law must be applied to offenses committed within this country, and also to those acts committed abroad by a Hungarian citizen which are offenses according to the Hungarian law.

(2) The Hungarian laws must be applied also to offenses committed on Hungarian ships or aerial vehicles while outside the borders of the Hungarian People's Republic.

Paragraph 4. (1) The Hungarian law must also be applied to an act committed abroad by a non-Hungarian citizen, if it

a) is an offense according to Hungarian law and is also punishable according to the laws of the place where committed,

b) is an offense against the state (Chapter 10.) regardless of whether or not it is punishable according to the law of the place where committed,

c) is a crime against humanity (Chapter 11.) or is some other offense the prosecution of which is prescribed by international pact.

(2) In the cases described under section (1) above, initiation of penal proceedings is ordered by the chief public prosecutor.

Diplomatic Immunity and Other Immunities Based on International Law

Paragraph 5. The holding of persons criminally responsible who enjoy diplomatic immunity and other immunities based on international law is governed by international agreements, or in the absence of such by international practice. In questions of international practice, the statement of the minister of justice must be accepted as basis [for decision on how to proceed].

Validity of Foreign Sentences

Paragraph 6. (1) The sentence of a foreign court has equal validity with the sentence of a Hungarian court, if

- a) this is mandated by an international agreement,
- b) the foreign court proceeded on the basis of proposals made by Hungarian authorities (Paragraph 8.).

(2) If a foreign court has already passed judgement on acts of a person who belongs under jurisdiction of the Hungarian penal code, then with the exception of section (1) the chief public prosecutor decides about initiating criminal proceedings. In such case the penalty or time already spent in custody as administered abroad must be counted towards the penalty determined by the Hungarian courts.

Assumption and Yielding the Execution of a Penalty

Paragraph 7. (1) Penalty determined by a foreign court may be executed on the basis of international pacts. The Hungarian law must be applied to the manner of administering the penalty.

(2) The administration of penalty determined by Hungarian courts may be yielded to another country on the basis of international pacts.

Offer to Conduct Penal Proceedings

Paragraph 8. (1) Conducting penal proceedings because of an offense committed by a non-Hungarian citizen may be offered to the courts of the perpetrator's home country if it is expeditious for the proceedings to be conducted by that authority.

(2) Penal proceedings against a Hungarian citizen may be offered if the perpetrator is the citizen of also another country or if he has settled abroad.

(3) Penal proceedings may not be offered if

a) the Hungarian court's decision judging the perpetrator's act is legally binding and final,

b) according to the other country's laws the act is not an offense or if the perpetrator is not subject to punishment.

Extradition and Rights of Asylum

Paragraph 9. (1) A citizen of the Hungarian People's Republic is not subject to extradition to another country.

(2) A non-Hungarian citizen may be extradited on the basis of international pact, or in the absence of such, of reciprocity. In questions of reciprocity the justice minister's statement provides guidance.

(3) Extradition will not take place even if reciprocity exists if the act

because of which the extradition is requested is not an offense either according to the Hungarian laws or to the laws of the country requesting the extradition, or if the perpetrator is not subject to penalty.

(4) A person's extradition must be refused if he has been granted the rights of asylum.

Chapter II

The Offense and the Perpetrator

Title I

The Offense

Paragraph 10. (1) Offenses are intentionally committed acts — or acts committed by carelessness, if the law also punishes commission by carelessness —, which are dangerous to society and for which the law orders a penalty to be meted out.

(2) Those acts or omissions are dangerous to society which violate or endanger the Hungarian People's Republic's national, social or economic order or the persons or rights of the citizens [sic].

Felony and Misdemeanor

Paragraph 11. (1) An act of offense is either a felony or a misdemeanor.

(2) Felonies are those intentionally committed offensive acts for which the law orders a penalty more severe than two years of loss of freedom to be meted out. All other offensive acts are misdemeanors.

Agglomeration

Paragraph 12. (1) Agglomeration of offenses exists when one or more acts of the perpetrator constitute several offenses and those are judged within one proceeding.

(2) If the perpetrator commits an identical offense by the same decision and to the injury of the same injured party, several times with short time intervals, it is not an agglomeration of offenses but a continuously committed offense.

Intentionality and Carelessness

Paragraph 13. The offense is committed intentionally by a person when he desires the consequences of his behavior or if he acquiesces in these consequences.

Paragraph 14. The offense is committed by carelessness by a person who foresees the possible consequences of his behavior but thoughtlessly hopes that those will not happen; also, who does not foresee the possibility of these consequences because he does not exercise the attention or circumspection expected of him.

Paragraph 15. The more severe legal consequences relating to the result as the offense's qualifying circumstance is applicable when the perpetrator has committed at least carelessness with respect to the result.

Title II

Attempt and Preparation

Paragraph 16. A person who begins the intentional commission of an offense but does not carry it to completion, is punishable for attempt.

Paragraph 17. (1) The completed offense's penal sanctions must be applied to the attempt.

(2) The penalty may be mitigated without limit or even omitted if the attempt was committed on an unsuitable subject or with unsuitable instruments.

(3) A person because of whose voluntary cessation of the action the offense is not carried to completion, and also the person who voluntarily prevents the result from occurring, cannot be punished for attempt.

(4) If in the cases of sections (2) and (3) the attempt already in itself is also the commission of another offense, the perpetrator is subject to punishment for this offense.

Paragraph 18. (1) If the law separately orders it, the person who provides the conditions necessary to the commission of the offense or make this easier, who instigates its commission, volunteers for it agrees to commit it or agrees to committing it jointly, is punishable for preparation.

(2) No person may be punished for preparation

a) through whose voluntary desisting the commencement of committing the offense does not take place;

b) who withdraws his offer, volunteering or acceptance for the purpose of preventing the commission from taking place, or whose efforts are aimed at getting the other cooperators to desist from committing [the offense], provided that commencement of committing the offense does not take place for any reason; c) who reports the preparation to the authorities.

(3) In the cases of section (2) if the preparation already in itself constitutes another offense, the person committing it is subject to penalty for this offense.

Title III

The Perpetrators

Paragraph 19. The perpetrators are the the culprit and his accomplice(s), as well as the instigator and the accessory before the fact (participants).

Paragraph 20. (1) The culprit is [the person] who carries out the actual fact in the law.

(2) Accomplices are those who together accomplish the actual legal facts of the intentional offense, knowing about each others' activities.

Paragraph 21. (1) The instigator is who intentionally convinces someone else to commit an offense.

(2) Accessory before the fact is who intentionally provides assistance to committing an offense.

(3) The penalty sanctions determined for the culprit and accomplices must be applied also to the participants.

Chapter III.

Obstacles to Holding One Responsible Under the Penal Law

Reasons for Exclusion from Being Subject to Penalty

Paragraph 22. Penalizability is excluded by:

- a) being of childhood age,
- b) ill mental state,
- c) duress and threats,
- d) mistake,
- e) low degree of danger posed by the action to society,
- f) justifiable defense,
- g) extreme necessity,
- h) lack of complaint,
- i) other reasons as defined by law.

Being of Childhood Age

Paragraph 23. A person under fourteen years of age at the time the act is committed, is not subject to penalty.

Ill Mental Health

Paragraph 24. (1) A person committing an act under such ill condition of the

mind's operation -- thus particularly in mental illness, feeble-mindedness, emotional deterioration, confusion of the mind or confusion of the identity --, which makes it impossible for him to recognize the consequences of the act or to act in accordance with this recognition, is not subject to penalty.

(2) The penalty may be lightened without limit if the ill state of the mind's functioning limited the perpetrator in recognizing the act's consequences or in acting in accordance with this recognition.

Paragraph 25. The measures of Paragraph 24 are not applicable to the person who commits the act in an intoxicated or dazed condition resulting from his own faults.

Duress and Threat

Paragraph 26. (1) A person committing an act under the influence of such duress or threat due to which he is unable to behave according to his own will, is not subject to penalty.

(2) The penalty can be lightened without limit if the duress or threat limited the perpetrator in behaving in accordance with his own will.

Mistake

Paragraph 27. (1) A person cannot be punished for committing a fact about which he did not know at the time he committed it.

(2) A person cannot be punished who commits an act under the erroneous assumption that it is not dangerous to society and he has a well-founded reason for this assumption.

(3) The mistake does not exclude punishability when it is caused by carelessness and the law also punishes commission resulting from carelessness.

The Action's Low Degree of Danger to Society

Paragraph 28. The person cannot be punished whose action when committed is dangerous to society to such a low degree that even the most lenient penalty applicable according to the law is unnecessary.

Justifiable Defense

Paragraph 29. (1) The person cannot be punished whose action is necessary to defend against unjustifiable attack against his own person or property or those of others, or against the public interest, or against one directly threatening these.

(2) The person also cannot be punished who exceeds the necessary limits of defense because he is unable to recognize it in his fright or due to justifiable excitement.

(3) The penalty can be lightened without limit if the fright or justifiable excitement limit the perpetrator in recognizing the necessary extent of defense.

Extreme Necessity

Paragraph 30. A person cannot be punished who defends his own or another's person or property against direct and otherwise unavoidable danger or if he

acts in protecting the public interest, assuming that he cannot be accused of causing the danger and that his act causes lesser injury than the one he endeavored to defend against.

(2) The person also cannot be punished who causes the same extent or greater injury than the one he acted to defend against because in fright or excusable excitement he is unable to recognize the injury's extent.

(3) The penalty can be reduced without limit if fright or excusable excitement limited the perpetrator in recognizing the extent of the injury.

(4) Extreme necessity cannot be established for the benefit of a person whose duty is to accept the danger as part of his profession.

Lack of Complaint

Paragraph 31. (1) In cases defined by law the offense can be punished only upon complaint.

(2) Presentation of the complaint is the injured party's right.

(3) If the injured party's ability to act is limited, his legal representative also has the right to present the complaint, and if he is unable to act, his legal representative has the exclusive right to present the complaint. In such cases the guardian authorities also have the right to make the complaint.

(4) If the injured party entitled to present the complaint dies, his next of kin is entitled to make the complaint.

(5) A complaint against any of the perpetrators is valid against all perpetrators.

(6) A complaint cannot be withdrawn.

Title II

Reasons for Terminating Punishability

Paragraph 32. Punishability is terminated by

- a) the perpetrator's death,
- b) lapse [statute of limitations],
- c) pardon,
- d) the danger the act presents to society ending or becoming minimal,
- e) other reason as defined by law.

Statute of Limitations on Punishability

Paragraph 33. (1) Punishability lapses

- a) in case of an offense punishable also by death, in twenty years,
- b) in case of other offenses in time corresponding to the penalty's upper limit, but with the passing of at least three years.

(2) Punishability of war crimes defined in Paragraphs 11 and 13 of decree number 31/1945. (II. 5) ME [5 February] [expansion unknown] elevated to legal force by law No VII. of the year 1945 and modified and supplemented by decree No. 1440/1945. (V. 1) ME, and other offenses against humanity (Chapter XI) do not lapse.

Paragraph 34. The first day of the lapse's time limit is

- a) for a completed offense, the day on which the legal state of affairs materializes,

- b) in cases of attempt and preparation, the day on which the act accomplishing these comes to an end,
- c) in case of offenses which materialize exclusively by failure to perform one's duties, the day when the perpetrator could still fulfill his obligation without the consequences established in penal law,
- d) in case of an offense constituted by maintaining a condition contrary to law, the day on which this condition ends.

Paragraph 35. (1) The time of lapse is interrupted by authorities proceeding in penal matters taking actions of penal procedure against the perpetrator because of the offense. On the day of the interruption the time in the statute of limitations begins again.

(2) If the penal procedure is suspended, the suspension's duration does not count towards the lapse's time limit. This regulation is not applicable if the penal procedure is suspended because the perpetrator is in locations unknown, or became mentally ill.

(3) In case of placing one on probation (Paragraph 72), the probationary time does not count towards the statutory time of lapse.

Ending of the Danger the Act Presents to Society

Paragraph 36. A person is not punishable whose act at the time of judging it is no longer dangerous to society or is dangerous to such a small extent that -- considering also his person -- even the most lenient penalty applicable according to the law is unnecessary.

Chapter IV.

Penalties and Measures

Title I

The Penalties

The Penalty's Purpose

Paragraph 37. The penalty is a legal disadvantage determined by law, applied because of the commission of an offense. The penalty's purpose is to prevent, in the interest of protecting society, either the perpetrator or someone else from committing another offense.

Types of Penalties

Paragraph 38. (1) Principal penalties are

1. the death penalty,
2. loss of freedom,
3. correctional and educational labor,
4. monetary fine penalty.

(2) Secondary penalties are

1. loss of rights to participate in public affairs,
2. loss of rights to practice an occupation,
3. loss of rights to drive motor vehicles,
4. banishment,
5. expulsion,

6. confiscation of property,

7. supplementary monetary fine punishment.

(3) The secondary penalties listed in points 2 through 6 of section (2) may also be applied independently without meting out a primary penalty if the other legal conditions exist for applying them.

The Death Penalty

Paragraph 39. (1) Death penalty may be ordered only against someone who at the time of committing the offense had completed his twentieth year of life.

(2) With the death penalty only confiscation of property may be applied as secondary penalty.

(3) When death penalty is meted out, when the sentence becomes final all those legal consequences come into force which the law ties to the loss of rights to participate in public affairs (Paragraph 54).

(4) If by clemency a death penalty is changed to another penalty, the court later decides about meting out other secondary penalties with the exception of confiscation of property.

Loss of Freedom

Paragraph 40. (1) Loss of freedom lasts until the end of life or for a definite length of time.

(2) For loss of freedom lasting for a definite length of time, the minimum length of time is three months, the maximum is fifteen years; in case of agglomerate or combined sentences, twenty years.

Paragraph 41. (1) Loss of freedom must be carried out in institutions serving to carry out such penalty, in penitentiary, prison or jail degrees.

(2) The order of carrying out loss of freedom, as well as the convict's duties and rights are regulated by separate statutes.

(3) Those citizen's rights and obligations of the convict which are contrary to the purpose of the penalty, thus particularly the ones covered by loss of rights to participate in public affairs, are suspended while the loss of freedom is administered.

Paragraph 42. (1) Loss of freedom for life, or [the same] replacing the death penalty due to clemency must be administered in a penitentiary.

(2) Loss of freedom for three years or longer must be administered in a penitentiary if it was meted out for

a) crimes against the state or humanity (Chapters X. and XI.),

b) act of terrorism (Paragraph 261.),

— hijacking of an aerial vehicle (Paragraph 262),

— taking a man's life, forcible rape, violence against chastity, causing public menace and cases of robbery qualifying as more severe (Paragraph 166 section (2), Paragraph 197 section (2), Paragraph 198 section (2), Paragraph 259 sections (2) and (3), Paragraph 321 sections (3) and (4)),

c) military crimes which are also punishable by death (Chapter XX).

(3) Loss of freedom for two years or longer must be administered in a penitentiary if the convict is a repeat offender.

Paragraph 43. Loss of freedom must be administered in a prison — with the

exception of Paragraph 42 cases —, if

- a) it was meted out for a felony,
- b) it was meted out for a misdemeanor and the convict is a repeat offender.

Paragraph 44. Loss of freedom meted out for misdemeanor must be administered in a jail, except if the convict is a repeat offender.

Paragraph 45. (1) The court decides on what degree the loss of freedom is to be administered.

(2) When deciding the penalty, taking into consideration the governing circumstances (Paragraph 83) — especially the perpetrator's personality and the motivation for the offense —, one degree more severe or more lenient administration may be specified than prescribed in the law.

Paragraph 46. (1) In case of impeccable behavior demonstrated during the administration of the penalty the court may order that the penalty's remaining portion is to be administered in a degree more lenient by one degree; and, if the convict repeatedly and severely disturbs the order of administering the penalty, the court may order the remaining portion of the penalty to be administered in the next more severe degree.

(2) Taking into consideration the convict's changed behavior, the court may void its decision made on the basis of section (1).

Granting of Conditional Release [Conditional Freedom]

Paragraph 47. (1) The court grants [may grant] conditional release to a convict sentenced to loss of freedom for a definite length of time if — considering

especially the impeccable behavior demonstrated during the administration of the penalty and the ability that he will lead a law-abiding lifestyle — it can be expected with good reason that the punishment's goal can be achieved even without further deprivation of freedom.

(2) Granting of conditional release is in order if the convict has fulfilled — at least four-fifths of his penalty to be administered in a penitentiary, — at least three-fourths of his penalty to be administered in a prison, — at least two-thirds of his penalty to be administered in a jail.

(3) Conditional release may not be granted to

- a) a habitual repeat offender,
- b) a person sentenced to loss of freedom for an intentional offense committed after being sentenced to loss of freedom to be administered on a prior occasion and before administration of the sentence was completed,
- c) someone who has not fulfilled at least three months of loss of freedom,
- d) someone sentenced to expulsion.

(4) A convict sentenced to loss of freedom for life may be granted conditional release only after serving at least twenty years of loss of freedom, and if it can be reasonably expected that the punishment's purpose can be achieved even without further denial of freedom. If the convict commits an additional offense during the administration of loss of freedom for life, the sentence of loss of freedom for this [offense] cannot be administered but the earliest time of granting conditional release can be postponed by five years at the maximum.

Paragraph 49. (1) The conditional release's duration is the same as the balance

of the loss of freedom, but at least one year; for life sentences, ten years.

(2) If the balance of the loss of freedom is shorter than one year and its administration was not ordered, the penalty must be considered completed as of the last day of the balance, after the time of conditional release passed [sic].

(3) The convict may be placed under protective supervision for the duration of the conditional release but at least for one year.

(4) The court may terminate the conditional release if the convict is sentenced to loss of freedom to be administered for an offense committed during the conditional release. The court may [also] terminate the conditional release if the convict is sentenced to some other penalty or if he violates the rules of behavior.

(5) In case the conditional release is terminated, the time spent on conditional release does not count towards the loss of freedom.

Corrective and Educational Labor

Paragraph 49. (1) The person sentenced to corrective-educational labor is required to perform the specified work at the place of work designated, his personal freedom cannot be limited in other respects.

(2) A portion of the convict's wages extending from five percent to thirty percent must be deducted to the benefit of the state.

(3) The convict -- inasmuch as this is not contrary to the punishment's purpose -- is entitled to the other rights related to his work.

(4) The corrective and educational labor's duration is minimum six months and maximum two years; in case of agglomerate and cumulative penalty, three years.

Paragraph 50. (1) If the convict refuses to subject himself to the administration of the penalty or if he seriously violates the labor discipline, the corrective-educational labor or the remaining balance of this must be changed to loss of freedom. This loss of freedom must be administered in a jail.

(2) In case the correctional-educational labor is changed to loss of freedom, one day of loss of freedom is equivalent to two days of correctional-educational labor. At such a time the loss of freedom can be shorter than three months.

Monetary Fine Penalty

Paragraph 51. (1) The fine must be set by establishing the number of item days of the fine and -- in accordance with the perpetrator's income and personal circumstances -- the sum corresponding to one item day.

(2) The fine's minimum size is ten, the maximum is onehundred and eighty item days; in the case of agglomerate fine, twohundred and seventy item days. The sum of one item day must be set at a minimum of fifty, and a maximum of one-thousand forints.

Paragraph 52. In case of nonpayment of the fine it must be changed to loss of freedom to be administered in a jail. The sum of one item day is replaced by one day of loss of freedom. In such cases the loss of freedom can be less than three months.

Loss of Rights to Participate in Public Affairs

Paragraph 53. Whoever is sentenced to loss of freedom because of committing an

intentional offense and is unworthy of participating in public affairs, must be prohibited to practice those.

Paragraph 54. (1) The person prohibited from participating in public affairs

- a) may not take part in electing the members of an organ representing the people,
- b) may not serve as public official ["official person"],
- c) may not work in the body of an organ representing the people (committee),
- d) may not serve as official in a social organisation, cooperative, association,
- e) may not attain a military rank,
- f) may not receive domestic decoration and permission to accept foreign decoration.

(2) Upon the sentence becoming legally final, the person banned from public affairs loses

- a) all memberships, positions, offices or assignments he is excluded from achieving by section (1),
- b) his military rank, and also his domestic decorations as well as his right to wear foreign decorations.

Paragraph 55. (1) The minimum length of being banned from public affairs is one year, the maximum length is ten years.

(2) The duration of being banned from public affairs begins when the sentence becomes legally final. The time during which the rights affected by being banned from public affairs are suspended according to Paragraph 41 section (3) and Paragraph 51 is not counted towards this, nor is the time during which the

convict evades the administration of loss of freedom or implementation of restrictive custody. If the conditional release or temporary discharge is not terminated, the time spent on conditional release or temporary discharge must be counted towards the time of being banned from public affairs.

Loss of Rights to Practice an Occupation

Paragraph 56. A person can be banned from his occupation who commits the offense by

- a) violating the rules of an occupation requiring professional training, or
- b) using his occupation, [commits it] intentionally.

Paragraph 57. (1) Loss of right to an occupation is permanent in effect, or lasts for a specific length of time. A person can be banned permanently if he is unsuitable to practice his occupation. The shortest duration of being banned for a specific length of time is one year, the longest ten years.

(2) The regulation concerning calculation of the duration of time of being banned from public affairs (Paragraph 55 section (2)) must be appropriately applied in the case of being banned from an occupation.

(3) In case of ban for a specific length of time, return to practice an occupation requiring special training can be made dependent on whether the banned person can prove in a specified manner after the ban's duration that he has the knowledge necessary for the occupation. The court may dissolve a banned person's permanent ban if at least ten years have passed since the ban was instituted and if the person has become suitable to practice the occupation.

Loss of Rights to Drive Vehicles

Paragraph 58. (1) A person committing an offense by violating the rules of driving a vehicle requiring a license or uses a vehicle in the commission of an offense, may be banned from driving vehicles.

(2) A ban of driving vehicles may apply to [only] a specific type of vehicle.

Paragraph 59. (1) A ban to drive vehicles may be permanent or last for a specific length of time. A person may be banned permanently who is unsuitable to drive vehicles. The shortest duration for a ban lasting for a specific length of time is one year, the longest duration is ten years.

(2) The regulations applying to calculation the duration of banning from public affairs (Paragraph 55 section (2)), as well as proving mobility needed in the performance of an occupation and exemption from being permanently banned (Paragraph 57 section (3)) must be applied as appropriate to banning a person from driving vehicles.

Banishment

Paragraph 60. (1) In cases defined by law, a person sentenced to loss of freedom may be banned from one or several localities or from a specified part of the country if his being in such locations endangers the public interest.

(2) The shortest duration for banishment is one year, the longest five years. Regulations applying to the calculation of the duration of banning from public affairs (Paragraph 55 section (2)) must be applied appropriately for a case of banishment.

The Expulsion

Paragraph 61. The non-Hungarian citizen perpetrator whose presence in the country is undesirable, must be expelled from the territory of the Hungarian People's Republic. The expelled person is required to leave the country's territory and may return only with special permission.

Confiscation of Property

Paragraph 62. In cases defined by law, or if the offense is committed for the purpose of acquiring property, assuming in both cases that the perpetrator has adequate property,

- a) confiscation of property must be applied together with a penalty more severe than three years loss of freedom,
- b) confiscation of property may be applied together with loss of freedom to be administered.

Paragraph 63. (1) Confiscation of property can be ordered for the perpetrator's whole property or for specific items of property.

(2) Confiscation of property can be ordered also for items of property the ownership of which the perpetrator transferred for the purpose of frustrating the confiscation of property assuming that the person acquiring it was aware of the transfer's purpose; also for items of property the perpetrator transferred without cost after committing the offense.

(3) The confiscated property's ownership transfers to the state as the sentence becomes legally final.

Supplementary Monetary Fine Punishment

Paragraph 64. A person sentenced to a definite duration of loss of freedom and who has adequate earnings (income) or property

a) must be sentenced to supplementary monetary fine if he commits the offense for the purpose of acquiring property,

b) can be sentenced to supplementary monetary fine if by doing so he can be more effectively prevented from committing additional offenses.

(2) The supplementary monetary fine's minimum amount is five hundred forints, the maximum sum is one hundred thousand forints.

(3) Levying supplementary monetary fine is not applicable in case of confiscation of property.

Paragraph 65. (1) In case of nonpayment the supplementary monetary fine must be changed to loss of freedom to be administered in a jail. If the main penalty must be administered, the degree of this also serves as guidance for the loss of freedom replacing the supplementary monetary fine.

(2) In case the supplementary monetary fine penalty is changed to loss of freedom, one day of loss of freedom must be calculated in place of a sum ranging from one hundred to five hundred forints. The loss of freedom replacing the supplementary monetary fine cannot be shorter than one day, nor longer than six months.

Persons Excluding the Administration of the Punishment

Paragraph 66. Administration of the punishment is excluded by

- a) the convict's death,
- b) lapse,
- c) pardon,
- d) other reasons as defined by law.

Lapse of the Punishment

Paragraph 67. (1) The main penalty lapses with the passing of:

- a) twenty years, for cases of fifteen years of loss of freedom and penalties more severe than this,
- b) fifteen years in the case of loss of freedom of ten years or more,
- c) ten years in the case of loss of freedom for five years or more,
- d) five years in the case of loss of freedom for less than five years,
- e) three years in the case of correctional-educational labor or monetary fine.

(2) The penalty of supplementary monetary fine lapses with the passing of three years.

(3) Penalties exceeding fifteen years of loss of freedom or more severe than this meted out for war crimes as defined in Paragraphs 11 and 13 of decree No. 81/1945 (II. 5 [5 February]) ME raised to the force of law by law No. VII. of the year 1945 and modified and supplemented by decree No. 1440/1945 (V. 1) ME, and penalties meted out for other crimes against humanity (Chapter XI.) are not subject to the statute of limitations.

Paragraph 68. (1) Time for the main penalty's lapse begins to run on the day the decision meting out the penalty becomes legally binding, and if the

penalty's administration is suspended then on the day the probationary time expires. If the convict escapes while the loss of freedom is being administered, the time for the statute of limitations begins again with the day of the escape.

(2) The time for lapse of supplementary monetary fine begins on the day the main penalty's administration is completed, or on the day its administerability ends, and if the administration of loss of freedom is suspended then on the day the probationary time expires.

(3) The time of lapse is interrupted by measure taken against the convict for the purpose of administering the penalty. The statute of limitations starts again on the day of such interruption.

(4) In case supplementary monetary fine is applied, a measure taken for the purpose of administering either the main penalty or the supplementary penalty interrupts the lapse times of both penalties.

Exclusion of Administration of Penalty in Cases of Loss of Freedom for Life

Paragraph 69. In case of loss of freedom for life, loss of freedom for a specific length of time or correctional-educational labor cannot be administered.

Title II.

The Measures

Types of Measures

Paragraph 70. (1) Measures are

1. reprimand,

2. placement on probation,
3. forced [medical] treatment,
4. forced treatment of alcoholics,
5. confiscation,
6. restrictive confinement,
7. supervised probation [patronising supervision].

(2) Measures listed in points 1 through 3 of section (1) may be applied independently instead of punishment, ones listed in points 4 and 5 independently and also together with punishment, the ones listed in points 6 and 7 together with punishment and [other] measures.

The Reprimand

Paragraph 71. (1) A person whose action cannot be punished because of the low degree of danger it poses to society (Paragraph 28) or because it has become low (Paragraph 36) must be given a reprimand.

(2) That person who cannot be punished because his action has ceased to be dangerous to society or whose punishability has ended because of another reason defined by law (Paragraph 32 point e)) must also be reprimanded.

(3) By reprimand the authority expresses its disapproval and calls the perpetrator's attention that in the future he should restrain himself from committing an offense.

Placement on Probation

Paragraph 72. (1) The court may postpone meting out a penalty for an offense

punishable not more severely than two years' loss of freedom for a probationary time if it can be reasonably expected that the punishment's goal can be achieved in this manner also.

(2) Repeat offender cannot be placed on probation.

(3) The probationary time's duration may be from one to three years; the time must be set in years.

(4) A person placed on probationary time may be placed under supervised probation.

Paragraph 73. (1) If the person on probationary time violates the supervised probation's rules of behavior, the probationary time may be extended once by a maximum of one year.

(2) Placement on probation must be terminated and penalty meted out if the person on probation seriously violates the supervised probation's rules of behavior or if he is sentenced for an offense committed during the probationary time.

(3) Except for the case in section (2) the perpetrator's punishability ends with the probationary time's expiration.

Forced Medical Treatment

Paragraph 74. (1) Forced treatment must be ordered for the perpetrator of a punishable violent act against a person or of one causing public danger if he cannot be punished because of diseased condition of his mind's operation and if it must be feared that he will commit similar acts, assuming that in case

he were punishable his penalty would have to be more severe than one year's loss of freedom.

(2) The compulsory medical treatment is carried out in a secure institution designated for that purpose.

(3) The compulsory treatment must be terminated if its necessity no longer exists.

Compulsory Treatment of Alcoholics

Paragraph 75. Involuntary treatment may be ordered for a perpetrator if his offense is related to his alcoholic lifestyle and if sentenced to administered loss of freedom exceeding six months.

Paragraph 76. Instead of punishment of loss of freedom not exceeding six months or more lenient than this, as an independent measure, the perpetrator may be required to undergo treatment in a work therapy institution if his offense is related to his alcoholic lifestyle and if the conditions exist for treatment in the institution. The maximum time for institutional treatment is two years.

The Confiscation

Paragraph 77. (1) That item must be confiscated which

a) was used as instrument in the commission of the offense, or one that was intended for that purpose, if it is the perpetrator's property, and even if it is not as long as possession of it endangers public safety,

b) came into existence through the commission of the offense,

c) the offense's perpetrator received for committing the offense, either from its owner or from someone else with his [the owner's] approval.

(2) That product of the press must be confiscated in which the offense materializes.

(3) In cases defined by law, that item must be confiscated for which the offense was committed or which was the object of the given material advantage.

(4) If the confiscation cannot be ordered or carried out, the perpetrator may be required to pay the item's value in case of section (1) point a), and must be required in cases of section (1) point c) and section (3).

(5) Confiscation of an item in the perpetrator's possession may exceptionally be omitted in case of section (1) point a) if it would represent inequitable disadvantage not in proportion with the weight of the offense.

(6) The confiscated item becomes property of the state.

(7) Confiscation must be ordered also when the perpetrator cannot be punished due to being of childhood age, diseased mental condition or if the action's degree of danger to society is low.

(8) Confiscation is not applicable after the passing of time determined for lapse of the act's punishability, but at least five years.

Restrictive Confinement

Paragraph 73. (1) The court orders restrictive confinement for a multiple repeat offender who has been sentenced earlier at least three times to administered loss of freedom each exceeding one year for intentional offenses against

life, bodily integrity and health (Chapter XII, Title I), sexual morals (Chapter XIV, Title II), official person (Chapter XV, Title VI.), public safety (Chapter XVI, Title I.), property (Chapter XVIII), or for disturbing the peace (Paragraph 271), or for narcotics abuse (Paragraph 282). Ordering restrictive confinement is applicable only if the perpetrator had already completed his twentieth year of life at the time the offense was committed, is sentenced to at least two years' loss of freedom for any of the offenses listed, and the measure is necessary in the interest of preventing the commission of another offense.

(2) The court does not determine the restrictive confinement's duration; its maximum duration is five years.

(3) Restrictive confinement is a form of loss of freedom which begins after administration of the loss of freedom sentence ends. Deadlines calculated from the [end of] administration of loss of freedom begin with the completion of the administration of restrictive confinement, or when temporary release becomes final.

(4) If the duration of loss of freedom and restrictive confinement together exceeds twenty years, that portion of restrictive confinement exceeding this cannot be carried out.

Paragraph 79. (1) The court may grant temporary release to the person who has served at least two years in restrictive confinement and can be reasonably expected not to commit additional offenses. The temporary release's duration is the length of time remaining to the maximum duration of restrictive confinement.

(2) The temporarily released person is placed under supervised probation.

Paragraph 80. (1) The court may terminate temporary release if the released person violates the behavior rules of supervised probation, or if he is sentenced to corrective-educational labor or monetary fine penalty because of intentional offense committed while on release; and if he is sentenced to loss of freedom because of such an offense, the temporary release must be ended.

(2) Time spent on temporary release cannot be counted towards the duration of restrictive confinement.

(3) If corrective-educational labor or monetary fine punishment is meted out for intentional offense committed while on temporary release, and if the temporary release is terminated, the penalty meted out cannot be carried out.

(4) If the temporary release is not terminated, it becomes final with passage of the amount of time defined in Paragraph 79 section (1).

(5) If such loss of freedom is administered to the person on temporary release due to which the termination of release is not applicable, the temporary release continues after the loss of freedom is administered.

(6) Of more than one unadministered restrictive confinements, the one most disadvantageous to the convict must be administered.

Paragraph 81. (1) The rights and obligations defined in Paragraph 41 section (3) are suspended during restrictive confinement.

(2) Restrictive confinement cannot be administered if the administerability of the loss of freedom has lapsed, or if five years have passed since completion of the loss of freedom's administration. If the convict escapes from restrictive confinement, this deadline must be calculated from the day of the escape.

Supervised Probation

Paragraph 82. (1) Ordering of supervised probation is in order if it is necessary that the perpetrator be followed with systematic attention for successful completion of the conditional release (Paragraph 48) or probationary time (Paragraphs 72 and 89). Supervised probation must be ordered in case of temporary release (Paragraph 79).

(2) The person under supervised probation is required to observe the behavior rules prescribed by statute and in the court's decision, maintain systematic contact with his supervisor and provide him with the information necessary for his supervision.

(3) The behavior rules prescribe obligations and prohibitions in the interest of the supervised person working according to his abilities and leading a law-abiding life. Such are particularly the obligations concerning work, use of income, periodic reporting, possibly the necessary medical treatment, and the prohibitions against arbitrarily changing the place of residence and of work, visiting specified places or contact with certain persons.

Chapter V.

Deciding the Penalty

Principles of Deciding the Penalty

Paragraph 83. The penalty must be decided -- keeping its purpose (Paragraph 37) in mind -- within the limits defined in law in such a way that it conform to

the offense and the danger the perpetrator poses to society, the degree of guilt and to the other aggravating and mitigating circumstances.

Paragraph 24. Death penalty can be meted out exceptionally and only if — taking into consideration the offense and the outstanding danger the perpetrator poses to society, the particularly high degree of guilt — society's protection can be insured only by applying this penalty.

Agglomerate Penalty

Paragraph 25. (1) One penalty must be given in the case of an agglomeration of offenses (Paragraph 12).

(2) The main penalty must be decided by using as basis the most severe one of the penalty items of the offenses in the agglomeration of offenses.

(3) If the law orders loss of freedom for specific lengths of time for at least two of the offenses in the agglomeration of offenses, and the upper limit of the penalty item according to section (2) is insufficient to achieve the purpose of punishment, then this can be increased by half but must not reach the cumulative total of the upper limit of penalty items determined for the separate offenses.

Paragraph 26. (1) In case of agglomerate offenses the supplementary penalty applicable for any of the offenses in the agglomeration of offenses can be meted out.

(2) The supplementary penalty must not exceed the maximum extent or duration defined by law even in the case of agglomerate penalty.

Mitigating the Penalty

Paragraph 87. (1) More lenient main penalty than the penalty item may be given exceptionally, if its minimum extent is too severe considering the regulations of Paragraph 83.

(2) Based on section (1), if the penalty item's minimum extent is

a) at least ten years of loss of freedom, instead at least five years loss of freedom may be meted out,

b) at least five years' loss of freedom, instead at least two years' loss of freedom may be meted out,

c) at least two years' loss of freedom, instead at least one year's loss of freedom may be meted out,

d) at least one year's loss of freedom, instead of this loss of freedom for shorter duration, or corrective-educational labor, or if -- considering the perpetrator's personal circumstances meriting special consideration -- even this is too severe, monetary fine penalty may be meted out,

e) loss of freedom for less than one year, instead of this corrective-educational labor or monetary fine penalty may be meted out.

(3) In cases of attempt and of aiding and abetting in the offense, if even the penalty applicable on the basis of section (2) points a) through d) is too severe, the penalty must be determined based on the next point of section (2).

(4) If the law permits unlimited mitigation, even the minimum extent of any type of penalty may be given.

Supplementary Penalty Applied Instead of Main Penalty

Paragraph 88. Supplementary penalty may be applied exceptionally as sole punishment instead of a main penalty when the penalty item for the offense is not more severe than two years' loss of freedom, and if the punishment's goal can also be achieved in this manner. Only one supplementary penalty can be given as independent penalty.

Suspension of Administering the Penalty

Paragraph 89. (1) Enforcement of loss of freedom not exceeding one year and of monetary fine may be suspended for a probationary time if — particularly with consideration of the perpetrator's personal circumstances — it can be reasonably expected that the punishment's purpose can be achieved even without enforcing it.

(2) In cases deserving special consideration the enforcement of loss of freedom exceeding one year but not exceeding two years may also be suspended.

(2) The probationary time of monetary fine is one year; loss of freedom sentence given for misdemeanor can be suspended for from one to three years, loss of freedom sentence given for felony can be suspended for probationary time extending from one year to five years. The probationary time must be determined in years and cannot be shorter than the loss of freedom sentence given.

(4) If the perpetrator is sentenced several times for the same type of offenses suspended for probationary times, and the probationary times of none of the penalties have been completed yet, the previous penalty's probationary time

extends to the completion of the latter penalty's probationary time.

(5) If such loss of freedom is administered to the perpetrator because of which enforcement of the suspended penalty cannot be ordered, the probationary time extends by the loss of freedom's duration.

(6) Simultaneously with suspension of the loss of freedom's enforcement the perpetrator can be placed under supervised probation.

Paragraph 90. The punishment's enforcement cannot be suspended if

- a) the intentional offense was committed prior to completion of the loss of freedom's administration or during the probationary time of its suspension,
- b) the perpetrator is a repeat offender.

Paragraph 91. (1) The suspended punishment must be enforced if

- a) it is established during the probationary time that enforcement of the penalty was suspended contrary to a reason for exclusion included in Paragraph 90,

- b) the perpetrator is sentenced to enforceable loss of freedom for an act committed during the probationary time, or corrective-educational labor meted out for such an offense is changed to loss of freedom,
- c) the perpetrator seriously violates the behavioral rules of supervised probation.

(2) Suspended monetary fine punishment must be enforced also if the perpetrator is sentenced for suspended loss of freedom, corrective-educational labor or enforceable monetary fine punishment for an offense committed during the probationary time.

The Overall Penalty

Paragraph 92. (1) If the perpetrator is sentenced to several terms of loss of freedom for specific lengths of time or to several terms of corrective-educational labor, or to loss of freedom for a specific length of time and corrective-educational labor, the final sentences must be summarized in an overall penalty.

(2) Only those enforceable penalties can be included in the overall penalty which have not yet been carried out at the time of including in the overall penalty or which are being carried out continuously.

(3) Loss of freedom replacing monetary fine penalty (Paragraph 52) cannot be included in the overall penalty.

Paragraph 93. (1) Same types of penalties must be included in the same type of overall penalty.

(2) The overall penalty's duration -- using the penalties to be included in the overall penalty as foundation -- must be set in such a way that it should exceed the most severe penalty but not reach the total length of the penalties.

(3) When several corrective-educational labor sentences are included in an overall penalty, the rate of subtraction from the wages must be set so that it should not be smaller nor greater than the lowest or highest rates, respectively, determined in the individual sentences.

(4) If all offenses were committed prior to the earliest sentence given becoming final, the overall penalty's duration must be determined as if an agglomerate penalty were determined. However, the overall penalty's duration

must reach that of the most severe penalty, but must not reach the total duration of the penalties.

Paragraph 94. (1) In case terms of loss of freedom to be carried out in various degrees are included in the overall penalty, the overall penalty must be administered in the most severe of these degrees. But if the overall penalty's duration is three years or more, or two years or more for a multiple repeat offender, the overall penalty's degree of administration must be determined by taking this into consideration.

(2) If the degree of enforcement determined by applying section (1) would mean an unfair disadvantage for the convict, the next more lenient degree may be determined.

Paragraph 95. In case loss of freedom and corrective-educational labor are included in the overall penalty, the overall penalty must be set in loss of freedom. The corrective-educational labor or the unadministered portion of this must be considered as loss of freedom to be administered in a jail, at the rate determined by Paragraph 50 section (2).

Paragraph 96. (1) Supplementary penalties cannot be included in the overall penalty, nor can be any loss of freedom replacing a monetary fine penalty.

(2) Of supplementary penalties of identical content — with the exceptions of confiscation of property and supplementary monetary fines — the most disadvantageous one to the convict must be carried out. This provides guidance also for supplementary penalty applied as substitute for the main penalty.

Regulations Concerning Special Repeat Offenders

Paragraph 97. (1) For special repeat offenders — unless the law orders otherwise — the upper limit of an additional offense's penalty item increases by half, but must not exceed fifteen years. In case of agglomerate penalty the penalty item according to Paragraph 85 section (2) must be increased by half.

(2) If the penalty item for the offense is discretionary as either loss of freedom, correctional-educational labor or monetary fine, for the special repeat offender the penalty item can only be loss of freedom.

(3) In the case of section (1), if the penalty item is loss of freedom of specified duration, the penalty's minimum length is, inasmuch as the law

- a) does not define it — six months,
- b) defines it in one year — one year and six months,
- c) defines it in two years — three years,
- d) defines it in five years — seven years,
- e) defines it in ten years — twelve years.

(4) Based on Paragraph 87 section (2), the penalty may be lightened only in cases deserving special consideration.

Regulations Concerning Multiple Repeat Offenders

Paragraph 98. (1) The regulations of Paragraph 97 provide guidance for determining the penalty of multiple repeat offenders.

(2) More lenient penalty than the penalty item's lower limit can be determined for a multiple repeat offender only on the basis of Paragraph 87 sections (3) and (4).

Credit for Preliminary Custody

Paragraph 99. (1) The entire time spent in preliminary custody must be credited towards the sentence of loss of freedom, correctional-educational labor, monetary fine or supplementary monetary fine penalty.

(2) When crediting it, one day of preliminary custody equals two days of correctional-educational labor, or one day's penalty item. Calculation according to Paragraph 65 section (2) determines crediting towards supplementary monetary fine penalty.

Chapter VI.

Relief from Disadvantages Connected to Previous Record [of punishment]

Effect of Release

Paragraph 100. (1) If relieved, the convict becomes free of those disadvantageous circumstances which the statute connects to the sentence.

(2) The relieved person is to be considered as having no record of convictions and does not have to account for such sentences for which he has received relief.

(3) In case of committing additional offenses, the relief does not extend to those disadvantageous consequences which this law ties to the earlier sentence.

The Method of Obtaining Relief

Paragraph 101. The convict may receive relief

- a) by the power of the law,
- b) on the basis of a court's decision,
- c) by means of pardon.

Relief by Law

Paragraph 102. (1) Relief is accomplished by the power of law

- a) in case supplementary penalty is used in place of monetary fine penalty and main penalty, on the day the decision becomes final,
 - b) in case of suspended loss of freedom, on the day the probationary period ends,
 - c) in case of correctional-educational labor and also of loss of freedom sentence given for an offense of misdemeanor carelessness, on the day the punishment is completed or when its administrability ceases,
 - d) in case of loss of freedom for intentional misdemeanor, with the passing of three years after the punishment is completed or its administrability ceases,
 - e) in case of loss of freedom not exceeding one year given for a felony, with the passing of five years following completion of the punishment or cessation of its administrability,
 - f) in case of loss of freedom exceeding one year but no longer than five years given for a felony, with the passing of ten years following completion of the punishment or cessation of its administrability.
- (2) Relief does not occur, or loses its effect in case of section (1) point b) if the punishment is ordered to be carried out. In this case the rules of unsuspended punishment provide guidance for the relief.

(3) Multiple repeat offender does not receive relief by law.

Relief by Court

Paragraph 103. (1) Upon request, the court may grant relief to a person sentenced to administrable loss of freedom for a felony if he deserves it and if

- a) three years have elapsed in the case of loss of freedom not exceeding one year,

- b) five years have elapsed in case of loss of freedom exceeding one year but no longer than five years,

- c) ten years have elapsed in case of loss of freedom for a specified length of time exceeding five years

since completion of the loss of freedom or since the end of its administrability.

(2) Points a) and b) of section (1) are not applicable if the convict is a repeat offender.

(3) The court may grant relief to a multiple repeat offender if he deserves it and if

- a) ten years have elapsed in the case of loss of freedom not exceeding fifteen years,

- b) fifteen years have elapsed in the case of loss of freedom for a specified length of time exceeding fifteen years

since completion of the loss of freedom or since the end of its administrability.

(4) In judging the deserving, the lifestyle the convict has led since completing the main penalty must be taken into consideration, and further, whether --

inasmuch as he had the ability to do so -- he made amends for the damage caused by his action.

Paragraph 104. (1) The court may grant preliminary relief to the convict if it metes out corrective-educational labor or suspends the administration of loss of freedom, and if the convict is worthy of relief.

(2) The preliminary relief loses its effect if the corrective-educational labor is changed to loss of freedom or if administration of a suspended sentence is ordered.

Unity of Relief

Paragraph 105. In the case of applying a supplementary penalty, the convict is not relieved and cannot be relieved of the disadvantages tied to his record of penalties until administration of the supplementary penalty is completed or its administrability ceases. This regulation does not apply to supplementary monetary fine punishments if preliminary relief is granted by the court, and to prohibitions from pursuing an occupation or from driving motor vehicles.

Relief by Pardon

Paragraph 106. The Hungarian People's Republic's Presidential Council may grant relief to the convict even if otherwise the law does not allow for this.

Chapter VII.

Regulations Concerning Youthful Offenders

The Youthful Offender

Paragraph 107. (1) A youthful offender is the person who at the time of committing the offense has already completed his fourteenth year of life but has not completed the eighteenth year.

(2) Sanctions of this law must be applied to youthful offenders with the modifications contained in the present chapter.

Application of Penalties and Measures

Paragraph 108. (1) The goal of penalties and measures applied against a youthful offender is primarily that the youthful offender may develop in the right direction and become a useful member of society.

(2) Penalty must be meted out when application of measures does not achieve the purpose.

Penalties and Measures

Paragraph 109. (1) Confiscation of property cannot be applied against a youthful offender.

(2) Bearing in a correctional institution may also be applied as measure against a youthful offender.

Loss of Freedom

Paragraph 110. (1) The minimum duration of loss of freedom applicable to a youthful offender is three months for any offense.

(2) Maximum duration of loss of freedom applicable to a youthful offender who completed sixteen years of age at the time the offense was committed is

a) fifteen years for offense punishable also by death,

b) ten years in case of offense punishable by loss of freedom exceeding ten years.

(3) For offenses punishable also by the death penalty, the maximum duration of loss of freedom applicable to a youthful offender not yet sixteen years of age at the time the offense was committed is ten years.

(4) Except for cases in sections (2) and (3) the maximum duration of loss of freedom applicable to a youthful offender is five years if the offense is punishable by loss of freedom exceeding five years.

(5) When calculating the deadline for lapse of punishability and from the viewpoint of measures applicable to repeat offenders the durations of time determined in sections (2) through (4) govern.

Paragraph 111. (1) A youthful offender's loss of freedom must be carried out in an institution for implementing penalties on youthful offenders.

(2) Loss of freedom must be administered in the prison for youthful offenders if

a) the youthful offender is sentenced to loss of freedom of two years or longer duration of time for felony,

b) the youthful offender sentenced to loss of freedom for the duration of one year or longer is a repeat offender or if prior to committing an intentional offence he had been sentenced to rearing in a correctional institution for an intentional offense.

(3) Except for the case in section (2) the loss of freedom must be carried out in the jail for youthful offenders.

(4) If the convict completed his twentyfirst year of life when the loss of freedom begins or completes it while serving his term, the court decides the degree of administering the loss of freedom on the basis of Paragraphs 42 through 44.

Granting of Conditional Release

Paragraph 112. The youthful offender may be placed on conditional release from the loss of freedom sentence if he has completed at least

a) three-fourths of his punishment administrable in the prison for youthful offenders,

b) two-thirds of his punishment administrable in the jail for youthful offenders.

Corrective-Educational Labor

Paragraph 113. Corrective-educational labor may be applied only to those youthful offenders who completed their sixteenth year of life at the time the offense is judged.

The Monetary Fine Penalty

Paragraph 114. (1) Youthful offender can be given monetary fine penalty if he has independent earnings (income) or adequate property.

(2) In case it cannot be enforced, the monetary fine penalty or supplementary monetary fine penalty must be changed to loss of freedom.

Loss of Right to Participate in Public Affairs

Paragraph 115. A youthful offender can be prohibited from participating in public affairs only if sentenced to loss of freedom exceeding one year.

Banishment

Paragraph 116. A youthful offender living in adequate family circumstances cannot be banished from the locality in which his family lives.

Placement on Probation

Paragraph 117. (1) Youthful offender may be placed on probation for any offense.

(2) Duration of the probationary time is one year.

(3) In case of Paragraph 73 section (2) the court orders rearing in correctional institution or orders [it] as penalty.

Rearing in Correctional Institution

Paragraph 118. (1) The court orders rearing in a correctional institution when in the interest of the youthful offender's successful upbringing his placement in an institution is necessary.

(2) The court does not define the duration of rearing in a correctional institution; its shortest duration is one year.

(3) The person who has spent at least one year in a correctional institution and has started on the path of betterment [sic], the court may release from the institution for one year upon the institutional council's recommendation. If the releasee demonstrates impeccable behavior for one year, his release becomes permanent; in the opposite case the court orders resumption of rearing in the correctional institution.

(4) The person fulfilling his nineteenth year of life must be released from the correctional institution. For the purpose of continuation of studies the court may order that rearing in the correctional institution continue until the end of that academic year in which the perpetrator completes his nineteenth year of life.

Supervised Probation [Patronized Supervision]

Paragraph 119. Youthful offender sentenced to suspended loss of freedom, placed on probation, placed on conditional release and temporarily released from a correctional institution are under supervised probation.

Agglomerate and Overall Penalty

Paragraph 120. (1) Agglomerate and overall penalty cannot exceed loss of freedom for twenty years in case of Paragraph 11, section (2) point a), fifteen years in point b) and in case of section (3), seven years and six months in case of section (4).

(2) In case rearing in correctional institution and loss of freedom coincide, the loss of freedom must be carried out as overall penalty. The court may extend the duration of this by at the most one year, if this is necessary in the interest of achieving the goal defined in Paragraph 108.

(3) In case rearing in correctional institution and corrective-educational labor coincide, the court decides which one must be administered. The duration of corrective-educational labor ordered administered may be extended.

Relief from Disadvantages Connected to Previous Record

Paragraph 121. (1) The convicted youthful offender is relieved by the power of law

a) on the day the sentence becomes final, if enforcement of the sentence of loss of freedom is suspended,

b) on the day the penalty is completed or its enforcability terminates if he was sentenced to enforced loss of freedom for intentional misdemeanor or to enforced loss of freedom not exceeding one year for a felony,

c) with the passing of three years calculated from the day the penalty is completed or its enforcability terminates if he was sentenced to enforced loss of freedom exceeding one year but not more than five years for a felony.

(2) After completing a sentence of loss of freedom exceeding one year meted out for felony, the court upon request [may] grant relief to the youthful offender inasmuch as he is deserving of it.

(3) Relief of a youthful offender is not hindered by the fact that enforcement

of a supplementary monetary fine penalty has not been completed, or its enforceability has not terminated.

Chapter VIII.

Regulations Concerning Soldiers

The Perpetrators

Paragraph 122. (2) In the application of this law a soldier is any member of the actual effective force of the armed forces, any member of the professional force of armed bodies, and those who are fulfilling reserve military service with other than the armed forces.

(2) Regulations of this law must applied to soldiers with the modifications included in this chapter.

(3) Regulations concerning youthful offenders (Chapter VII.) cannot be applied to soldiers.

(4) Only a soldier can commit a military offense as perpetrator.

Reasons for Exclusion from Punishability

Paragraph 123. (1) A soldier cannot be punished for an act carried out on orders, except if he knew that he is committing an offense by carrying out the order.

(2) The person issuing the order is held responsible as perpetrator for an offense carried out on order.

(3) Military offense is punishable only upon complaint of the appropriate commander, except if the soldier also commits another offense within the military offense.

Reason for Terminating Punishability

Paragraph 124. The perpetrator cannot be punished for a military offense if one year has passed since the end of the perpetrator's service relationship.

Judging the Offense Within Disciplinary Authority

Paragraph 125. For misdemeanor, disciplinary action may be applied against a soldier instead of punishment, if the punishment's goal can be achieved also by this.

Application of the Death Penalty

Paragraph 126. Death penalty may be applied against a soldier who at the time of committing the offense had completed his eighteenth year of life but had not yet completed his twentieth year of life, if the offense severely violates the military interests.

Enforcement of Loss of Freedom in Disciplinary Battalion and in Military Stockade

Paragraph 127. (1) If the convict can be kept in service,
a) in cases regulated by Paragraph 43, loss of freedom not exceeding two years'

duration, and further, in cases regulated by Paragraph 44 the loss of freedom exceeding six months but not exceeding two years' duration sentence given to a soldier in the enlisted ranks must be carried out in a disciplinary batallion, b) in cases governed by Paragraph 44, the loss of freedom sentence not exceeding one year given to professional soldier and to one in the reenlisted ranks, as well as [a sentence] not exceeding the duration of six months given to a soldier in the enlisted ranks must be carried out in the military stockade.

(2) From the viewpoint of a loss of freedom sentence's degree of execution, the disciplinary batallion is equivalent to prison in a case governed by Paragraph 43, and in a case governed by Paragraph 44, to jail, [while] the military stockade is [equivalent] to jail.

(3) If the convict's service relationship has ended, the punishment or its remaining balance must be carried out in prison or in jail according to section (2).

Overall Penalty

Paragraph 128. Paragraph 127 governs the execution of loss of freedom meted out as overall penalty.

Exclusion of the Application of Corrective-Educational Labor

Paragraph 129. During the time of his service relationship, corrective-educational labor cannot be applied against a soldier.

Supplementary Military Penalties

Paragraph 130. (1) The following supplementary penalties may also be applied against a soldier if he is not prohibited from participating in public affairs:

- a) loss of rank,
- b) termination of the service relationship,
- c) reduction of rank,
- d) lengthening of the waiting time.

(2) The supplementary penalties listed in section (1) points a) and b) may also be used independently, instead of a main penalty.

Loss of Rank

Paragraph 131. (1) With loss of rank the soldier loses his rank.

(2) Loss of rank must be applied if the perpetrator has become unworthy of his rank.

Termination of Service Relationship

Paragraph 132. Termination of service relationship is applicable to professional and reenlisted soldiers if they have become unworthy of serving.

Reduction of Rank

Paragraph 133. (1) In case of reduction of rank the soldier is placed into the next lower rank than the one he has at the time the offense is judged.

(2) Reduction of rank must be applied when the offense involves injury to the

rank's respect but loss of rank is not necessary [not warranted].

(3) Simultaneously with the reduction of rank the time to be spent in the lower rank must be determined in from one to two years.

Lengthening the Waiting Time

Paragraph 134. (1) In case of lengthening the waiting time the soldier's prescribed waiting time for promotion into the next rank is lengthened. The lengthening must determined in years; its duration cannot exceed half of the prescribed waiting time.

(2) The waiting time must be lengthened when the soldier has to deserve the promotion by spending a longer waiting time.

Placement on Probation

Paragraph 135. In case a soldier in the enlisted ranks is placed on probation, the probationary time may last until termination of the service relationship; its minimum duration is six months.

Relief from Disadvantages Connected to Previous Record

Paragraph 136. (1) The court may grant preliminary relief to the convict from the disadvantages connected to his previous record if it orders the loss of freedom to be administered in a disciplinary battalion or in military stockage. This relief becomes effective on the day the punishment is completed or when its enforcibility ceases.

(2) Application of military supplementary penalty does not hinder the convict's being granted relief.

Chapter IX.

Explanatory Regulations

Paragraph 137. As used in this law:

1. public official is:

a) a member of the public representative organ, judge, prosecutor, member of the people's court, member of a decisionmaking committee in labor and cooperative matters,

b) a person performing service at the public representation or national government organs, courts or prosecutor's office, whose activity is part of the organ's regular operation,

c) other person performing tasks in the country's government,

2. state organ: public representation, governmental, court and prosecutorial organs, as well as the state's economic operative organ and institution,

3. the person commits an armed offense who has a firearm or explosive material in his possession, and an offense while armed who in the interest of overcoming or preventing resistance, has equipment in his possession suitable to take human life,

4. property disadvantage: damage caused in property and property advantage lost,

5. relation: direct line relative and the spouse of such, adoptive and foster parent, adopted and foster child, sibling, spouse, lifemate and fiancé[e],

- spouse's direct line relative and sibling, as well as the sibling's spouse,
6. a crime pact is created when two or more persons commit offenses in an organized manner, or agree on this,
 7. a person commits offenses for business who strives to obtain profit regularly by committing offenses similar in character,
 8. war must be understood to include also any danger seriously threatening the state's security,
 9. product is industrial and agricultural product (produce), whether it is raw material, semifinished product or finished merchandise; live animals as well as the means of production receive the same consideration as products, even if these are real estate,
 10. general publicity must be understood to include also the commission of an offense by means of press, other public information medium or multiplication,
 11. the offense is committed in group if at least three persons participate in committing it,
 12. the perpetrator of an intentional offense is a repeat offender if earlier he had been sentenced to administered loss of freedom for an intentional offense and five years did not pass since completion of his punishment or since its enforcibility ended until the commission of an additional offense,
 13. special repeat offender is that repeat offender who on both occasions commits the same or similar types of offenses,
 14. multiple repeat offender is the person who prior to committing an intentional offense was sentenced to loss of freedom as a repeat offender, and three years have not elapsed since completion of his last punishment or since

the end of its enforcibility until the commission of his additional offense which threatens with loss of freedom.

Paragraph 138. As used in this law, in the absence of different regulation, threat is: causing the expectation of severe disadvantage, which is suitable of arousing serious fear in the threatened.

Special Part

Chapter X

Crimes Against the State

Conspiracy

Paragraph 139. (1) A person participating in or supporting a conspiracy aimed at overthrowing or weakening the Hungarian People's Republic's national, social or economic order is committing a crime and is to be punished by loss of freedom of from one year to five years, the conspiracy's initiator or leader from two years to eight years.

(2) If the conspiracy severely endangers the national, social or economic order, the participants and supporters are to be punished by loss of freedom extending from two years to eight years, the initiator and the leader from five years to fifteen years.

(3) If the conspiracy is committed armed or in time of war, the participant and the supporter are to be punished by loss of freedom of from two years to five years in the case of section (1), from five years to fifteen years in the

case of section (2), the initiator and the leader by loss of freedom extending respectively according to the foregoing differentiation from five years to fifteen years and from ten years to fifteen years or for life, or by death.

(4) A person committing preparation aimed at conspiracy is punishable for the offense by loss of freedom up to three years, in time of war extending from one year to five years.

(5) The person who reports the conspiracy to the authorities before they found out about it, cannot be punished for conspiracy.

Rebellion

Paragraph 140. (1) A person participating in or supporting a mass rebellion aimed at overthrowing or weakening the Hungarian People's Republic's national or social order commits an offense and is punishable by loss of freedom extending from one year to five years.

(2) The penalty is loss of freedom extending from two years to five years, when

a) the rebellion severely disturbs the public order,

b) the rebellion is committed while armed.

(3) The penalty is loss of freedom extending from five years to fifteen years if the rebellion is committed

a) armed,

b) in time of war.

(4) The penalty for the rebellion's initiator and leader is loss of freedom from two years to eight years, in cases defined by section (2) from five years to ten years, in cases defined by section (3) extending from ten years to

fifteen years or for life, or death.

(5) A person committing preparation aimed at rebellion is punishable by loss of freedom extending from one year to three years, in time of war from one year to five years.

(6) The participant or supporter is not punishable if he abandons the rebellion voluntarily or on being called upon by the authorities before severe consequences would derive from it, and leaves the scene.

Causing Damage

Paragraph 141. (1) A person who causes severe disadvantage for the purpose of weakening the Hungarian People's Republic's national, social or economic order in the sphere of his office, service or public trust by his activity, failure to fulfill his obligations or by inadequate fulfillment of these, commits an offense and is punishable by loss of freedom extending from two years to eight years.

(2) The penalty is loss of freedom extending from five years to fifteen years if the damage caused involves particularly severe disadvantages.

(3) If causing damage is committed in the time of war, the penalty is loss of freedom extending from ten years to fifteen years or for life, or death.

(4) The person committing preparation aimed at causing damage is punishable by loss of freedom extending to three years, in time of war from one year to five years.

Destruction

Paragraph 142. (1) The person who annihilates, renders unusable or damages public works, productive-, public traffic or communication plants, or equipment, public buildings or structures, product inventory, war materials or other property item similarly important due to its purpose, for the purpose of weakening the Hungarian People's Republic's national, social or economic order, commits an offense and is punishable by loss of freedom extending from five years to ten years.

(2) The penalty is loss of freedom extending from ten years to fifteen years or for life, or death, if

the destruction involves particularly severe disadvantage,

b) the destruction is committed in the time of war.

(3) The person committing preparation aimed at destruction is punishable for felony by loss of freedom extending from one year to five years, in time of war from two years to eight years.

Assault [Assassination Attempt]

Paragraph 143. (1) The person who causes severe bodily harm to a member of the public representation organ or to a person fulfilling a directing role at a state organ or social organization because of his activity performed in the interest of socialism commits a felony and is punishable by loss of freedom extending from two years to eight years, and if the bodily injury causes death, from five years to fifteen years.

(2) The person who kills a person designated in section (1) because of his activity performed in the interest of socialism commits a felony and is punishable by loss of freedom extending from ten years to fifteen years or to life, or by death.

(3) The person who commits preparation aimed at assault, is punishable by loss of freedom for felony in cases defined in section (1) to three years, in cases defined in section (2) extending from one year to five years: in time of war the penalty is loss of freedom extending from one year to five years, and from two years to eight years respectively.

Treason

Paragraph 144. (1) The Hungarian citizen who establishes or maintains contact with a foreign government or foreign organization for the purpose of injuring the Hungarian People's Republic's independence, regional integrity, political, defense or other similarly important interest, commits a felony and is punishable by loss of freedom extending from five years to fifteen years.

(2) The punishment is loss of freedom ranging from ten years to fifteen years or for life, or death, if the treason is committed

- a) causing severe disadvantage,
- b) through the use of government service or official assignment,
- c) in time of war.

(3) The person committing preparation aimed at treason is punishable for felony by loss of freedom ranging from one year to five years, in time of war from two years to eight years.

Breach of Faith

Paragraph 145. The Hungarian citizen who by abusing his government service or official assignment establishes or maintains contact with a foreign government or foreign organization and by this endangers the Hungarian People's Republic's independence, regional integrity, political, economic, defense or other similarly important interest, commits a felony and is punishable by loss of freedom ranging from two years to eight years, in time of war from five years to fifteen years.

Assisting the Enemy

Paragraph 146. (1) The person who in time of war enters into contact with the enemy for the purpose of weakening the Hungarian People's Republic's military strength, extends aid to them or causes disadvantage to [our] own or [our] allied armed forces, commits a felony and is punishable by loss of freedom ranging from ten years to fifteen years or for life, or by death.

(2) The person committing preparation aimed at assisting the enemy is punishable for felony by loss of freedom ranging from two years to eight years.

Espionage

Paragraph 147. (1) The person who obtains, collects and provides data usable to the Hungarian People's Republic's disadvantage for the purpose of bringing it to the attention of a foreign government or foreign organization, commits a felony and is punishable by loss of freedom ranging from five years to fifteen years.

(2) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if the espionage was committed

- a) concerning a national secret,
- b) as member of a spy organization,
- c) in time of war.

(3) The person who volunteers or agrees to perform espionage, commits a felony and is punishable by loss of freedom ranging from two years to eight years, in case of other preparatory activity from one year to five years, in time of war from two years to eight years.

(4) A person cannot be punished for volunteering or agreeing to perform espionage, who -- before other spying activity would have developed -- reports his volunteering or agreement to the authorities immediately, and if it took place abroad, immediately upon his arrival in Hungary and fully discloses his connections with the foreign organization.

Agitation

Paragraph 143. (1) The person who, in order to incite hatred in others against

- a) the Hungarian nation or some nationality,
- b) the Hungarian People's Republic's constitutional order,
- c) the Hungarian People's Republic's other international contacts aimed at alliance, friendship or cooperation,
- d) some people [nation], denomination or race, and further, against some groups or individuals -- because of their socialist convictions --, commits an act suitable for arousing such, is punishable for felony by loss of freedom

ranging from one year to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if

a) the agitation is committed before the general public or as a member of a group,

b) the agitation leads to the disturbance of the Hungarian People's Republic's international relationships in cases of section (1) points c) and d).

(3) The person who commits preparation aimed at agitation as defined in section

(2) point a) is punishable for misdemeanor by loss of freedom ranging up to two years, in time of war for felony ranging from one year to five years.

Paragraph 149. The person who commits physical violence against another for his activity performed in the interest of socialism, commits a felony and is punishable by loss of freedom ranging from one year to five years.

Failure to Report [something to the authorities]

Paragraph 150. (1) The person who obtains reliable information about preparation to commit conspiracy, rebellion, damage, destruction, assault, treason, breach of faith, assisting the enemy or espionage, or that a yet undiscovered such offense has been committed, and does not report it to the authorities as soon as he is able to do so, commits a felony and must be punished by loss of freedom ranging up to three years.

(2) The perpetrator's relation cannot be punished for failure to report a committed offense.

Offenses Against Other Socialist Countries

Paragraph 151. The offenses defined in this chapter must also be punished if committed against another socialist country.

Supplementary Punishments

Paragraph 152. In the case of offenses defined in this chapter, confiscation of property and banishment may also be used as supplementary punishments.

Chapter XI

Crimes Against Humanity

Title I

Crimes Against Peace

Incitement for War

Paragraph 153. (1) The person who incites for war or otherwise conducts war propaganda, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The penalty is loss of freedom ranging from five years to fifteen years if the offense is committed before the general public.

(3) The person who commits preparation aimed at inciting for war is to be punished for felony by loss of freedom up to three years.

Crime Against the Peoples' Freedom

Paragraph 154. The Hungarian citizen who voluntarily enlists in an armed body [formed] to oppress the people, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

Genocide

Paragraph 155. (1) The person who for the purpose of complete or partial eradication of some national, nationality, race or religious group

- a) kills a member of the group,
 - b) forces the group to come under living conditions which threaten it or individual members of it with destruction,
 - c) takes measures the purpose of which is to obstruct births within the group,
 - d) carries the children belonging to the group off to another group,
- commits a felony and is to be punished by loss of freedom ranging from ten years to fifteen years or for life, or by death.

(2) The person who commits preparation aimed at genocide is to be punished for felony by loss of freedom ranging from two years to eight years.

Crime Against National, Nationality, Racial or Religious Group

Paragraph 156. The person who causes severe bodily or mental harm to a member of a national, nationality, racial or religious group for belonging to the group commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

Racial Discrimination

Paragraph 157. The person who commits an act prohibited by international law in order that some racial group may obtain or retain rule over another racial group or to systematically oppress the other racial group, unless a more severe crime takes place, is to be punished for felony by loss of freedom ranging from one year to five years.

Title II

War Crimes

Violence Against Civilian Population

Paragraph 158. (1) The person who uses violence against a civilian person or a prisoner of war in an area of military operation or occupation, exhibits inhuman treatment or seriously abuses his authority in some other manner, unless a more severe crime takes place, commits a felony and is to be punished by loss of freedom ranging from five years to ten years.

(2) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if the felony defined in section (1) causes death.

(3) In the application of this Paragraph, inhuman treatment is specifically

a) settlement of the civilian population of the occupying forces on the occupied area or resettlement of the occupied area's population,

b) depriving the civilian population and the prisoners of war of their rights to be judged by regular and impartial procedures,

c) unjustified delays in transporting the prisoners of war or civilian personnel [to their] home[lands].

War Plundering

Paragraph 159. (1) The person who on military operation or occupied area plunders the civilian properties or causes severe damage to the population forced providing of services or in some other manner, unless a more severe offense takes place, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The penalty is loss of freedom ranging from five years to fifteen years if the offense is committed armed or in a group.

Criminal Warfare

Paragraph 160. The military commander who by violating the international legal rules of warfare

a) conducts a military operation which causes severe damage in the civilian population's life, health or possessions, in internationally protected cultural property, in establishments containing dangerous forces,

b) launches offensive against unprotected locality or weapon-free zone, commits a felony and is to be punished by loss of freedom ranging from ten years to fifteen years or for life, or by death.

Plundering on the Battlefield

Paragraph 161. The person who loots the dead, wounded or sick of the battlefield

commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

Violation of Truce

Paragraph 162. (1) The person who violates the conditions of truce commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The penalty is loss of freedom ranging from five years to ten years if violation of the truce leads to particularly severe consequences.

Violence Against a Battlefield Envoy

Paragraph 163. (1) The person who assaults, unlawfully detains the enemy's battlefield envoy or his escort or uses other violence against him, unless a more severe crime takes place, commits a felony and is to be punished by loss of freedom up to three years.

(2) The person who kills the enemy's battlefield envoy or his escort, is to be punished by loss of freedom ranging from ten years to fifteen years or for life, or by death.

Abuse of the Red Cross

Paragraph 164. The person who in time of war abuses the sign of the red cross (red crescent, red lion and sun) or other sign or signal serving a similar purpose and recognized internationally, or commits an act of violence against

against a person or object under the protection of these, is to be punished for felony by loss of freedom ranging from one year to five years.

Other War Crimes

Paragraph 165. Separate legal statute (regulation No 81/1945. (II. 5)

[5 February] ME, elevated to the force of law by law No VII of the year 1945, modified and supplemented by statute No 1440/1945 (V. 1) ME) regulates the other war crimes.

Chapter XII.

Crimes Against the Person

Title I

Crimes Against Life, Bodily Integrity and Health

Taking of a Human Life

Paragraph 166. (1) The person who kills someone else commits a felony and is to be punished by loss of freedom ranging from five years to fifteen years.

(2) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if the taking of a human life is committed

- a) by advance planning,
- b) by desire for material gain or
- c) for other base reason or purpose,
- d) with special cruelty,
- e) against an official person during or because of his official actions,

- f) on more [than one] persons,
- g) endangering the lives of many people,
- h) as a special repeat offender.

(3) The person who commits preparation aimed at the taking of a human life, is to be punished for felony by loss of freedom ranging up to three years.

(4) The person who commits the taking of a human life out of carelessness is to be punished for misdemeanor by loss of freedom ranging up to five years.

(5) From the viewpoint of being a special repeat offender, offenses of similar character are the assault (Paragraph 143 sec. (2)) and manslaughter committed in the state of severe excitement.

Manslaughter Committed in the State of Severe Excitement

Paragraph 167. The person who kills someone else while [the perpetrator is] in a state of severe excitement resulting from an appreciable cause, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

Collaboration in Suicide

Paragraph 168. The person who induces someone to commit suicide or provides assistance in committing it, if the suicide is attempted or committed, commits a felony and is to be punished by loss of freedom ranging up to five years.

Abortion

Paragraph 169. (1) The person who aborts some else's embryo commits a felony

and is to be punished by loss of freedom ranging up to three years.

(2) The penalty is loss of freedom ranging to five years if the abortion is committed

a) as a business,

b) without the woman's agreement,

c) causing severe bodily harm or danger to life.

(3) The penalty is loss of freedom ranging from two years to eight years if the abortion causes death.

(4) The woman who aborts her [own] embryo [performs intentional act] or has it aborted, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Bodily Harm

Paragraph 170. (1) The person who violates someone else's bodily integrity or health, if the injury or illness heals within eight days, commits the misdemeanor of causing light bodily harm and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) If the injury or illness caused by bodily violence heals beyond eight days, the perpetrator commits the felony of causing severe bodily harm and is to be punished by loss of freedom ranging to three years.

(3) If the bodily harm is committed out of base motivation or for such purpose, the penalty for felony is loss of freedom ranging to three years in the case of causing light bodily harm, to five years in the case of causing severe bodily harm.

(4) The perpetrator commits a felony and is to be punished by loss of freedom ranging to five years if the bodily harm causes lasting deficiency or severe deterioration of health or if he commits severe bodily harm with special cruelty.

(5) The penalty is loss of freedom ranging from two years to eight years if the bodily harm causes danger to life, or [causes] death.

(6) The person who commits the offense of inflicting severe bodily harm by carelessness, is to be punished for misdemeanor by loss of freedom ranging to one year, by corrective-educational labor or by monetary fine punishment, by loss of freedom ranging to three years in a case defined by section (4), to five years in the case of causing injury endangering life.

(7) Perpetrator of a misdemeanor defined in section (1) can be punished only upon a complaint.

Endangerment Committed Within the Sphere of the Job

Paragraph 171. (1) The person who, by violating the rules of his occupation, exposes the life, bodily integrity or health of another or of others to direct danger, or causes bodily harm, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty is

a) loss of freedom ranging to three years if the offense causes lasting deficiency, severe deterioration of health or mass accident,

- b) loss of freedom ranging to five years if the offense causes death,
 - c) loss of freedom ranging from two years to eight years if the offense causes the deaths of more than two people, or causes a fatal mass accident.
- (3) If the perpetrator causes the direct danger intentionally, he commits a felony and is to be punished by loss of freedom ranging to three years in the case of section (1), and to five years, from two years to eight years or from five years to ten years respectively in the cases of section (2), according to the differentiations made there.
- (4) As applied in this Paragraph, the rules concerning the use and handling of firearms are also rules of occupation.

Failure to Extend Aid

Paragraph 172. The person who does not provide the aid expectible of him to an injured or to each person whose life or bodily integrity is in direct danger, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

- (2) The penalty is loss of freedom ranging to three years for felony if the injured dies, and if providing the aid could have saved his life.
- (3) The penalty for felony is loss of freedom ranging to three years, in case of section (2) to five years, if the dangerous situation is caused by the perpetrator, or if he is otherwise also obligated to render assistance.
- (4) The last turn [sic] of section (3) is not applicable against the person who is required to render assistance on the basis of the traffic rules.

Failure to Provide Care

Paragraph 173. The person who does not fulfill his obligation to provide care to a person who cannot take care of himself due to his condition or advanced age and by this endangers the life, bodily integrity or health of the one requiring care, commits a felony and is to be punished by loss of freedom ranging to three years.

Title II

Crimes Against Freedom and Human Dignity

Compulsion

Paragraph 174. The person who compels another by force or threat to do, not do or endure something, and by this causes a significant injury to his interests, inasmuch as no other offense takes place, commits a felony and is to be punished by loss of freedom ranging to three years.

Violation of Personal Freedom

Paragraph 175. (1) The person who deprives someone else of his personal freedom commits misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed

- a) for base motivation or purpose,
- b) by imitating official procedure,

- c) by tormenting the injured party,
- d) causing significant damage to interests.

Violation of the Privacy of Someone's Home

Paragraph 176. (1) The person who enters or remains in another's residence, other premises or an enclosed location belonging to these using force, threat or imitation of official procedure, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine penalty.

(2) The person who enters or remains in another's residence, other premises or enclosed area belonging to these in spite of the wishes of, or by misleading the one residing there or in charge of same

- a) at night,
- b) armed,
- c) while armed,
- d) in a group,

is to be punished according to section (1).

(3) The person is also to be punished according to section (1) who prevents another in the manners defined in sections (1) and (2) from entering his residence, other premises or enclosed areas belonging to these.

(4) The penalty is loss of freedom ranging to three years for felony if the act defined in section (1) is committed in the manner written in section (2).

Violation of Private Secret

Paragraph 177. (1) The person who discloses without sound reason a private secret which came to his knowledge through his profession or public authority, commits a misdemeanor and is to be punished by monetary fine penalty.

(2) The penalty is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the offense causes significant injury to interests.

Violation of Mail Secret

Paragraph 178. (1) The person who opens or obtains another's sealed shipment containing message for the purpose of learning its contents, or gives it for such purpose to an unauthorized person, as well as the person who spies a message forwarded by telecommunication equipment, commits a misdemeanor and is to be punished by monetary fine penalty.

(2) The penalty is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the offense causes severe injury to interests.

Slander [also 'libel]

Paragraph 179. (1) The person who states or spreads facts about someone before another [which facts are] suitable to damage reputation, or uses an expression directly referring to such fact, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty is loss of freedom ranging to two years if the slander is committed

- a) for base motivation or purpose,
- b) before the general public,
- c) causing significant injury to interests.

Injury to Honor Defamation

Paragraph 180. (1) The person who, besides the case of Paragraph 179, uses an expression suitable to damage the honor, or commits another such act against another

- a) in connection with performance of the damaged party's job, fulfillment of his public assignment or activity in the public interest,
- b) before the general public,

is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The person who commits injury of honor by assault and battery is to be punished according to section (1).

Desecration

Paragraph 181. The person who disgraces the dead or his memory in a manner defined in Paragraphs 179 or 180, commits a misdemeanor and is to be punished by the penalty defined there.

Proof of Facts

Paragraph 182. (1) The perpetrator cannot be punished for offenses defined in Paragraphs 179 through 181 if the fact suitable for injuring one's honor is proven to be true.

(2) Proving the facts is called for if statement or spreading the fact or use of the expression referring directly to it is justified by the public's or anyone's justified interest.

Complaint and Desire

Paragraph 183. (1) Perpetrators of offenses defined in Paragraphs 176 through 181 are to be punished upon complaint.

(2) In case of Paragraph 181 the complaint may be made by the deceased's relation and heir.

(3) Slander or injury of honor committed to the injury of a person enjoying diplomatic and other personal immunity based on international law is to be punished upon the injured's desire stated through diplomatic channels.

Chapter XIII.

Traffic Offenses

Offense Against Traffic Safety

Paragraph 184. (1) The person who endangers the safety of railroad, air, waterway or public highway traffic by damaging a traffic roadway, vehicle,

operating equipment or apparatus belonging to these, by creating obstacle, removing or changing a traffic signal, by application of a misleading signal, through the use of violence or threat against the driver of a vehicle in traffic or in other similar manner, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is

a) loss of freedom ranging to five years if the offense causes severe bodily harm,

b) loss of freedom ranging from two years to eight years if the offense causes lasting deficiency, severe deterioration of health or mass accident,

c) loss of freedom ranging from five years to ten years if the offense causes death,

d) loss of freedom ranging from five years to fifteen years if the offense causes fatal mass accident.

(3) The person who commits the offense defined in section (1) out of carelessness is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment, in cases defined in section two, according to the differentiations made there, by loss of freedom ranging, respectively, to two years, to three years, to five years and from two years to eight years.

(4) The punishment may be mitigated without limit — in a case warranting special consideration may be omitted — against the person who voluntarily terminates the danger before any damaging consequence would derive from it.

Endangerment of Railroad, Aerial or Waterway Traffic

Paragraph 185. (1) The person who endangers the life or bodily integrity of another or of others by violating the rules of railroad, aerial or waterway transportation commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is

- a) loss of freedom ranging to five years if the offense causes severe bodily harm,
- b) loss of freedom ranging from two years to eight years if the offense causes lasting deficiency, severe deterioration of health or mass accident,
- c) loss of freedom ranging from five years to ten years if the offense causes death,
- d) loss of freedom ranging from five years to fifteen years if the offense causes a fatal mass accident.

(3) The person who commits the offense defined in section (1) out of carelessness is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment, in cases defined in section (2), according to the differentiations made there is to be punished by loss of freedom ranging to two years, three years, five years, or from two years to eight years respectively.

(4) The punishment may be mitigated without limit-- in a case warranting special consideration may be omitted-- against the person who voluntarily terminates the danger before any damaging consequence would derive from it.

Endangerment on Public Roads

Paragraph 136. (1) The person who subjects the life or bodily integrity of another or of others to direct danger by violating the rules of traffic of public roads commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is

- a) loss of freedom ranging to five years if the offense causes severe bodily harm,
- b) loss of freedom ranging from two years to eight years if the offense causes lasting deficiency, severe deterioration of health or a mass accident,
- c) loss of freedom ranging from five years to ten years if the offense causes death,
- d) loss of freedom ranging from five years to fifteen years if the offense causes the deaths of more than two people or a fatal mass accident.

Causing Accident on Public Roads

Paragraph 137. (1) The person who causes severe bodily harm to another or to others by carelessness through violating the rules of traffic on public roads commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty is

- a) loss of freedom ranging to three years if the offense causes lasting

- deficiency, severe deterioration of health or mass accident,
- b) loss of freedom ranging to five years if the offense causes death,
- c) loss of freedom ranging from two years to five years if the offense causes the deaths of more than two people, or a fatal mass accident.

Driving a Vehicle while Intoxicated

Paragraph 133.(1) The person who drives a rail- or aerial vehicle or a motor-driven waterway vehicle or floating work machine or a motor-driven vehicle on public roads in a condition influenced by alcoholic beverage commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is

- a) loss of freedom ranging to three years if the offense causes severe bodily harm,
- b) loss of freedom ranging to five years if the offense causes lasting deficiency, severe deterioration of health or mass accident,
- c) loss of freedom ranging from two years to five years if the offense causes death,
- d) loss of freedom ranging from five years to ten years if the offense causes the deaths of more than two people or a fatal mass accident.

(3) The person who causes a consequence defined in section (2) by driving a non-motor-driven waterway vehicle or floating work machine or non-motor-driven vehicle on public roads in a condition influenced by alcoholic beverage is to be punished according to the differentiation made therein.

Prohibited Transfer of Control of a Vehicle

Paragraph 139 (1) The person who transfers control over a rail- or aerial vehicle as well as motor-driven waterway vehicle or floating work machine or motor-driven vehicle on public roads to a person in a condition influenced by alcoholic beverage or unsuitable for driving for another reason commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The punishment for felony is

- a) loss of freedom ranging to three years if the offense causes lasting deficiency, severe deterioration of health or mass accident,
- b) loss of freedom ranging to five years if the offense causes death,
- c) loss of freedom ranging from two years to eight years if the offense causes the deaths of more than two people or a fatal mass accident.

Abandonment in Trouble

Paragraph 190. If the driver of a vehicle involved in a traffic accident does not stop at that location, or leaves that location before ascertaining whether anyone was injured or needs aid for danger directly threatening his life or bodily integrity, unless a more severe offense is committed, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Interpretive Orders

Paragraph 181. (1) The regulations established for offenses committed on public roads must be applied also when violation of the regulations referring to driving a public road vehicle causes injury or death [at a location] other than on the public roads.

(2) As applied in Paragraphs 185 through 187 the regulations concerning pedestrians and passengers are not considered traffic regulations.

Chapter XIV.

Crimes Against the Marriage, Family, Youth, and Sexual Morals

Title I.

Crimes Against the Marriage, Family, and Youth

Bigamy

Paragraph 192. The person who enters into another marriage during the validity of his marriage, or who enters into a marriage with a person restricted by a valid marriage commits a felony and is to be punished by loss of freedom ranging to three years.

Changing the Family's Status

Paragraph 193. (1) The person who changes the family status of another, thus

particularly [if he] exchanges a child, or smuggles [a child] into another family, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed by an employee of a hospital or an educational institution during the performance of his job.

(3) If the person designated in section (2) commits the offense out of carelessness, he is to be punished for a misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Altering the Placement of Minors

Paragraph 194. The person who takes a minor placed on the basis of executive authority's decision away from the person with whom the authority placed that minor, without that person's agreement, for the purpose of lasting alteration of said placement, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Endangerment of a Minor

Paragraph 195. (1) The person obligated to rear, supervise or care for a minor, who severely violates his obligation derived from this task and by this endangers the minor's bodily, intellectual or moral development commits a felony and is to be punished by loss of freedom ranging to three years.

(2) Unless a more severe offense takes place, the person of adult age who induces a minor to commit an offense or to conduct a corrupt way of life, or endeavors to induce him so, is to be punished according to section (1).

Failure to Support

Paragraph 196. (1) The person who due to his own fault does not fulfill his support obligation based on statute and prescribed in an executive authority's decision, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) A person obligated by a court by a final decision to support a child without the establishment of paternity and who due to his own fault does not fulfill this obligation is to be punished according to section (1).

(3) The penalty is loss of freedom ranging to three years for felony if the failure to support exposes the one entitled to it to severe privation.

(4) The perpetrator cannot be punished on the basis of sections (1) and (2), and in case of section (3) his punishment can be mitigated without limit if he fulfills his obligation before imposition of a preliminary sentence.

Title II.

Crimes Against Sexual Morals

Forced Intercourse

Paragraph 197. (1) The person who forces a woman to perform intercourse outside

of the community of marriage by means of force or direct threats aimed at life or against bodily integrity, or who uses the woman's condition of being unable to defend herself or to express her desires and thus performs intercourse, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The punishment is loss of freedom ranging from five years to ten years if

a) the injured party is under the perpetrator's rearing, supervision, care or medical treatment,

b) on the same occasion several persons perform intercourse with the injured party, knowing of the actions of each other.

(3) If the perpetrator and the injured party enter into marriage before the court issues a preliminary sentence, the punishment may be mitigated without limit in the cases of section (1) and point a) of section (2).

Violation Against Modesty

Paragraph 193. (1) The person who forces another to perform sexual perversion or to endure the same outside of the community of marriage by means of force or direct threats aimed at life or against bodily integrity, or who uses another's condition of being unable to defend herself [himself] or to express her [his] desires, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the injured party is under the perpetrator's rearing, supervision, care or medical treatment.

(3) If the perpetrator and the injured party enter into marriage before the court issues a preliminary sentence, the punishment may be mitigated without limit.

Sexual Perversion Against Nature

Paragraph 199. That person of eighteen years of age or older who performs sexual perversion with a person younger than this [i.e., eighteen years of age] and is of the same gender, commits a felony and this will be punished by loss of freedom ranging to three years.

Unnatural Sexual Perversion Using Force

Paragraph 200. (1) The person who forces a person of the same gender to perform sexual perversion or to endure the same by using force or direct threats aimed against life or bodily integrity, or uses the other's condition of being unable to defend herself [himself] or to express her [his] desires and thus performs sexual perversion, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the injured party is under the perpetrator's rearing, supervision, care or medical treatment.

Corruption

Paragraph 201. (1) The person who performs sexual intercourse with a person

of less than fourteen years of age, as well as that person of eighteen years of age or older who performs sexual perversion with a person of less than fourteen years of age, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) That person of eighteen years of age or older who tries to induce a person of less than fourteen years of age to perform sexual perversity with him [with her] commits a felony and is to be punished by loss of freedom ranging to three years.

(3) The penalty is loss of freedom ranging from two years to eight years, or from one year to five years respectively if the injured party of the offense defined in section (1) and in section (2) respectively is relation of the perpetrator, or is under the perpetrator's rearing, supervision, care or medical treatment.

Paragraph 202. (1) The person who induces a person of less than fourteen years of age to perform sexual intercourse or sexual perversion with another, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) That person of eighteen years of age or older who endeavors to induce a person of less than fourteen years of age to perform sexual intercourse or sexual perversity with another, commits felony and is to be punished by loss of freedom ranging to three years.

(3) The penalty is loss of freedom ranging from two years to eight years, and from one year to five years respectively if the injured party of the offense

defined in section (1) and in section (2) respectively is relation of the perpetrator, or is under the perpetrator's rearing, supervision, care or medical treatment.

Incest

Paragraph 203. (1) The person who performs sexual intercourse or sexual perversion with his [her] direct line relative, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The offspring [party to, not result of, the offense. Translator], if he [she] at the time the offense is committed has not completed eighteen years of life, cannot be punished.

(3) The person who commits sexual intercourse with his [her] sibling, or performs unnatural sexual perversity, is to be punished for a misdemeanor by loss of freedom ranging to two years.

Lust as Business

Paragraph 204. The person who conducts sexual intercourse or sexual perversity as a business commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment. Banishment may also be applied as supplementary punishment.

Promoting Lust as Business

Paragraph 205. (1) The person who makes his [her] residence available to another

for the purpose of lust as business, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The person who induces another to participate in lust for business, or maintains or operates a brothel commits a felony and is to be punished by loss of freedom ranging to three years.

Deriving Support

Paragraph 206. The person who derives his [her] livelihood wholly or in part from a person conducting lust for business, commits a felony and is to be punished by loss of freedom ranging to three years. Banishment may also be applied as supplementary punishment.

Pandering

Paragraph 207. (1) The person who recruits another for the purpose of gaining profit to perform sexual intercourse or sexual perversity with another, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The Penalty is loss of freedom ranging from one year to five years if the pandering is for business.

(3) The penalty is loss of freedom ranging from two years to eight years if the pandering is committed

a) to the injury of the perpetrator's relation, or of a person under the rearing, supervision or care of the perpetrator, or of a person under eighteen years of age,

b) by means of deceit, force or direct threat aimed at life or against bodily integrity.

(4) The person who enters into an agreement to commit the pandering defined in section (2) commits a felony and is to be punished by loss of freedom ranging to three years.

Violation of Decency

Paragraph 201. The person who for the purpose of satisfying sexual desires exposes himself [herself] to another in a manner violating decency, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

Complaint [Private Complaint]

Paragraph 209. The offenses defined in Paragraph 197 section (1), Paragraph 198 section (1), as well as Paragraph 201 sections (1) and (2) can be punished only upon complaint, except if in connection with them an offense is also committed punishable without complaint.

Interpretive Order

Paragraph 210. As applied in Paragraphs 197, 198, and 200, a person of not yet twelve years of age must be considered to be unable to defend himself.

Chapter XV.

Crimes Against the Government, Administration of Justice and the Purity of Public Life

Title I.

Crime Against the Order of Elections

Paragraph 211. The person who, during the election of representatives of the national assembly, and of members of councils

- a) votes without being eligible,
- b) hinders an eligible person in voting,
- c) violates the secrecy of voting,
- d) falsifies the result of voting,

commits a felony and is to be punished by loss of freedom ranging to three years.

Title II.

Crimes Against [Public] Order

Abuse of the Right of Association

Paragraph 212. The person who participates in organizing or leading an association or organization the public listing of which has not been requested or has been refused, or one which was caused to disband, commits a misdemeanor

and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Breach of the Press Law

Paragraph 213. The person who

a) produces or disseminates without permit a press product for the production or dissemination of which permit is necessary,

b) disseminates a press product which has been ordered to be impounded or confiscated, commits a misdemeanor and is to be punished by monetary fine punishment.

Illegal Stay in the Country

Paragraph 214. The expelled foreigner who remains on the territory of the Hungarian People's Republic, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

Damaging a Geodesic Marker

Paragraph 215. The person who annihilates, damages or relocates a geodesic marker, commits a misdemeanor and is to be punished by monetary fine punishment.

Annihilation of a Historic Monument

Paragraph 216. The person who annihilates a historical monument in his possession, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Prohibited Border Crossing

Evasion of the Rules of Travel Abroad and Stay Abroad

Paragraph 217. (1) The person who

a) crosses the Hungarian People's Republic national border without permission or in a manner not permitted,

b) remains abroad permanently by evading the rules of travel abroad and staying abroad, and by this significantly injures the interests of the Hungarian People's Republic, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person who commits the offense defined in point b) of section (1) by abusing his service for official mission, is to be punished by loss of freedom ranging to five years.

(3) The penalty is loss of freedom ranging from one year to five years if the offense defined in point a) of section (1) is committed

a) armed,

b) in a group.

(4) The penalty is loss of freedom ranging from five years to ten years if the offense defined in point a) of section (1) is committed by illegally taking abroad an aerial vehicle.

(5) The person who commits preparation directed at forbidden border crossing or evading the rules of travel abroad and staying abroad, is to be punished for misdemeanor by loss of freedom ranging to two years, in the case of section (4) for felony by loss of freedom ranging from one year to five years.

(6) The perpetrator of the offense defined in section (1) is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment, if the act's severity is lesser -- with respect to its motivation, purpose, and other circumstances of the occasion.

(7) Confiscation of property and banishment may also be applied against the perpetrator of an offense defined in sections (1) through (5), as supplementary punishment.

Smuggling of People

Paragraph 218. (1) The person who provides assistance to forbidden border crossing for the purpose of obtaining financial gain or as a member of an organization promoting such acts, or upon assignment, or volunteers for or undertakes such, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The penalty is loss of freedom ranging from five years to ten years if the smuggling of people is committed as a business.

(3) Confiscation of property and banishment may also be applied as supplementary punishment against the perpetrator of smuggling people.

Failure to Make a Report [to the authorities]

Paragraph 219. (1) The person who obtains reliable information that
a) commission of an offense defined in Paragraph 217 sections (2) through (4), and in Paragraph 218, is being prepared,

h) a soldier is preparing to escape abroad (Paragraph 343 section (3)),
c) an offense designated in the above points has been committed but has not yet been discovered, and does not make a report about this to the authorities as soon as he is able to do so, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The perpetrator's relation cannot be punished for failure to make such report.

Damaging of Border Signs

Paragraph 220. The person who annihilates, damages, or relocates a sign serving to mark the national border, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Title III.

Violation of State Secret and Service Secret

Violation of State Secret

Paragraph 221. (1) The person who

a) illegally obtains a state secret,

b) illegally uses a state secret which came to his knowledge or into his possession, makes it available to an unauthorized person or makes it

unavailable to an authorized person,

committing a felony and is to be punished by loss of freedom ranging from one year to five years.

(3) The penalty is

a) loss of freedom ranging from two years to eight years if the disclosure of state secret is committed involving a particularly important state secret or causing severe disadvantage;

b) loss of freedom ranging from five years to fifteen years if the state secret becomes available to an unauthorized foreign person.

(4) The person who commits the violation of state secret by carelessness, is to be punished for misdemeanor by loss of freedom ranging to one year, in cases of section (2), according to the differentiation written there, to two years and to five years respectively.

(4) The person who commits preparation directed at the state secret as defined in section (2), is to be punished by loss of freedom ranging to three years, and to five years respectively according to the differentiation written therein.

Violation of Service Secret

Paragraph 222. (1) The person who

a) illegally obtains the service secret,

b) illegally uses the service secret which came into his knowledge or possession, or makes it available to an unauthorized person,

commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(?) The penalty is

- a) loss of freedom ranging from one year to five years, if as a consequence of the offense, the service secret, and
- b) loss of freedom ranging from two years to eight years if as a consequence of the offense, the military service secret became available to an unauthorized foreign person.

Omission of Reporting the Violation of State Secret

Paragraph 223. (1) The person who obtains information deserving credit that

- a) commission of a violation of state secret is in preparation,
- b) a yet undiscovered intentional violation of state secret has been committed, and does not make a report of this -- as soon as he is able to do so -- to the authorities, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The perpetrator's relation cannot be punished on the basis of section (1) point b).

State Secret and Service Secret

Paragraph 224. (1) State secrets are all data which if learned by an unauthorized person represents danger to the security or other important interest of the Hungarian People's Republic.

(2) Legal statutes or data declared to be that by regulation based on legal statute are state secret in all cases.

(3) Service secrets are all data concerning national organs, social organizations or cooperatives, as well as the operation of these, which if learned by an unauthorized person endanger the state organ's, social organization's or cooperative's smooth operation or the order of state government, national defense, administration of justice or economic operation.

Title IV

Offenses of the Office

Abuse of Office

Paragraph 225. The official person who violates the obligation of his office, exceeds his authority or otherwise abuses his official position in order to cause illegal disadvantage or to obtain illegal advantage, commits a felony and is to be punished by loss of freedom ranging to three years.

Assault in Official Procedure

Paragraph 226. The official person who bodily assaults another during his official process commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

Forcing of Confession

Paragraph 227. The official person who uses force, threats or other similar

method for the purpose of forcing to obtain a confession or statement commits a felony and is to be punished by loss of freedom ranging to five years.

Illegal Imprisonment [False imprisonment]

Paragraph 223. (1) The official person who during his proceedings illegally deprives another of his personal freedom commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging to five years if the illegal imprisonment is committed

- a) for base motives or purposes,
- b) to torment the injured party,
- c) causing severe consequences.

(3) Perpetrator of the act defined in section (1) commits a misdemeanor and is to be punished by loss of freedom ranging to one year if the imprisonment does not exceed twentyfour hours.

Title V

Offenses Against the Official Person

Violence Against the Official Person

Paragraph 229. (1) The person who obstructs the official person in his performance of legal procedures by use of violence or threats, forcing him to take measures, or assaults him during or because of his procedures, commits felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging to five years if the violence against the official person is committed in group or while armed.

(3) The organizer or leader of the group defined in section (2) is to be punished by loss of freedom ranging from two years to eight years.

(4) The person who participates in a group aimed at committing violence against the official person commits misdemeanor and is to be punished by loss of freedom ranging to two years, the group's organizer and leader are to be punished for felony by loss of freedom ranging to three years.

(5) The person who assaults the official person because of his performance of his duties is to be punished on the basis of sections (1) through (4) even if the assaulted person is no longer an official person at the time the offense is committed.

(6) A participant of the group cannot be punished on the basis of section (4) if he abandons the group voluntarily or upon being called on to do so by the authorities.

Violence Against a Person Performing a Public Task

Paragraph 230. The person who commits the acts defined in Paragraph 229 against:

a) an employee of the postal services or public transportation enterprise performing executing [i.e., operative] or security services,

b) a soldier performing security assignment,

c) civilian guard performing a public assignment,

d) a member of the lifesaving [ambulance] services,

e) against the attorney in court or other proceedings before the authorities,

f) against the physician in cases defined by statute
is to be punished according to the regulations therein.

Violence Against a Person Assisting the Official Person

Paragraph 231. The person who commits an act defined in Paragraph 229 against a person coming to the assistance or defense of an official person or of a person performing public assignment is to be punished according to the regulations therein.

Insulting the Authorities or an Official Person

Paragraph 232. (1) The person who states or spreads a fact or uses an expression referring directly to such facts before another person, which is suitable to undermine confidence in the authorities or in the official person's operation or to damage the official person's honor, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The person who in connection with the operation of the authorities or of an official person uses an expression suitable to damage the respect of the authorities or the honor of the official person, or commits other such acts, is to be punished according to section (1).

(3) The person who commits the offense defined in sections (1) and (2) before the general public is to be punished for misdemeanor by loss of freedom ranging to two years.

(4) The perpetrator cannot be punished if the stated fact becomes proven to be true. Proving the truth is in order if the stating or propagandizing of the fact or the use of the expression referring directly to the fact was justified by the rightful interest of the public or of anyone.

(5) Penal proceeding for offending the authorities or an official person is in order only on the basis of complaint made by the organ defined in statute. If the injured party desires that the complaint be issued, this can be refused only if carrying it out would be contrary to the public interest.

Title VI

Offenses Against the Administration of Justice

False Accusation

Paragraph 233. (1) The person who

a) falsely accuses another before the authorities with the commission of an offense,

b) brings fabricated proof to the knowledge of the authorities against another regarding an offense,

commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging to five years if penal procedure commences on the basis of the false accusation.

(3) If the accused is sentenced on the basis of the false accusation, the [perpetrator's] penalty is loss of freedom ranging from two years to eight years.

Paragraph 234. The person who falsely accuses another before the authorities with the commission of an offense because out of carelessness he does not know that his stating the facts is incorrect or that the proof is false, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Paragraph 235. The person who

- a) falsely accuses another with the breaking of rules before a detective authority, prosecutor, court or rule enforcement authority, or with committing a disciplinary misdemeanor before a detective authority, prosecutor, court or enforcer of disciplinary authority,
 - b) provides fabricated proof against another regarding the breaking of rules or disciplinary misdemeanor to an authority designated in point a)
- commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine penalty.

Paragraph 236. (1) If a process (basic case) commenced due to false accusation, until it is completed penal process for false accusation can be started only on the basis of complaint by the authority proceeding in the basic case. With the exception of the case of such a complaint, the statute of limitations for false accusation begins to run on the day the basic case is completed.

(2) Punishment of the perpetrator of false accusation may be mitigated without limit, in a case deserving special consideration may even be omitted if [the perpetrator] discloses the accusation's falseness to the proceeding authorities before completion of the basic case.

Misleading the Authorities

Paragraph 237. The person who makes a report to the authorities to serve as basis for a penal proceeding about which he knows that it is untrue -- inasmuch as the case of Paragraph 233 does not apply -- commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

False Witnessing

Paragraph 238. (1) The witness who gives false evidence regarding an essential circumstance of a case before the court or other authority, or who conceals the truth, commits false witnessing.

(2) The regulations regarding false witnessing must be applied also to the person who

a) as expert witness gives false professional opinion or as expert advisor gives false information,

b) as interpreter or translator translates falsely,

c) except for the case of Paragraph 233 section (1) point b) provides a false document or false means of material proof in a penal or civil case.

(3) The accused of a penal case cannot be punished on the basis of section

(2) point c).

(4) The penalty for false witnessing committed in a penal case is loss of freedom ranging to five years for felony. If the false witnessing concerns an offense for which the death penalty can also be meted out, the penalty is

loss of freedom ranging from two years to eight years.

(5) The penalty for false witnessing committed in a civil case is loss of freedom ranging to three years for felony, and if the subject of the case is particularly large property value or particularly significant other interest, loss of freedom ranging to five years.

(6) The person who commits false witnessing out of carelessness is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Paragraph 239. The person who commits false witnessing in a disciplinary, rulebreaking, labor matter or cooperative executive committee, elected [people's] court or other authority's proceedings, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Paragraph 240. Until the case (basic case) in which the false witnessing was committed is not completed, penal proceedings for false witnessing can be started only on the basis of complaint by the authority proceeding in the basic case. Excepting the case of such complaint, the statute of limitations for false witnessing begins to run on the day the basic case is completed.

Paragraph 241. (1) A person cannot be punished for false witnessing

- a) who in case of disclosing the truth would be accusing himself or a relation with the commission of an offense,
- b) who can refuse to bear witness for some other reason but was not informed of this prior to being heard, or whose being heard is excluded by law.

(2) The punishment may be mitigated without limit, in cases deserving special consideration may even be omitted against the person who prior to legally final completion of the basic case reports to the proceeding authorities the falseness of the means of proof provided by him.

Invitation for False Witnessing

Paragraph 242. The person who endeavors to induce another to bear false witness in a penal or civil case commits a misdemeanor and is to be punished by loss of freedom ranging to two years,

and who commits this in disciplinary, rulebreaking, labor matter or cooperative executive committee, elected [people's] court matters or matters in progress before other authorities, is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Concealment of Saving Circumstances

Paragraph 243. (1) The person who does not inform the person subjected to a penal proceeding, his defense counsel or the authorities about a fact on which the accused's dismissal may depend, commits a felony and is to be punished by loss of freedom ranging to five years.

(2) A person cannot be punished on the basis of section (1) who

a) by disclosing the fact would accuse himself or his relation with the commission of an offense,

b) whose being heard as a witness is excluded by law.

Accessory After the Fact

Paragraph 244. (1) The person who without having agreed with the perpetrator of an offense prior to its commission

- a) provides assistance for the perpetrator to escape from the pursuit of the authorities,
- b) endeavors to frustrate the success of the penal proceedings,
- c) cooperates in securing an advantage deriving from the offense,

commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The person who commits the offense of being accessory after the fact for the purpose of gaining profit is to be punished for felony by loss of freedom ranging to three years.

(3) The penalty for felony is loss of freedom ranging to five years if being accessory after the fact is committed

- a) in connection with conspiracy, rebellion, causing damage, destruction, criminal attempt [assassination], treason, breach of trust, assisting the enemy, spying, taking of human life (Paragraph 166 sections (1) and (2)), act of terrorism, gaining control of an aircraft or military offense punishable also by death,

- b) by an official person in the performance of his duties.

(4) Except for section (2) and point b) of section (3) a person cannot be punished who commits the offense of being accessory after the fact defined in point a) of section (1) in the interest of his relation.

Prisoner Escape

Paragraph 245. The person who escapes from the authorities' custody during the penal proceedings, and further during the administration of loss of freedom or of restrictive confinement, commits a felony and is to be punished by loss of freedom ranging to three years.

Prisoner Uprising

Paragraph 246. (1) The prisoner who together with fellow inmates participates in an open resistance severely endangering the order of administering the penalty commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The prisoner uprising's

a) originator, organizer or leader,

b) participant who uses violence against a person taking action against the prisoner uprising

is to be punished by loss of freedom ranging from two years to eight years.

(3) The prisoner uprising is to be punished by loss of freedom ranging from five years to fifteen years if the offense leads to particularly severe consequences.

(4) Punishment of the person who abandons the resistance voluntarily or upon being called on by the authorities to do so may be mitigated without limit in the case of section (1).

(5) The person who commits preparations aimed at prisoner uprising is to be

punished for felony by loss of freedom ranging to three years.

Attorney's Malfeasance

Paragraph 247. (1) The attorney who in order to cause illegal disadvantage to his client violates his obligation deriving from his profession commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging to five years if the offense is committed for the purpose of obtaining profit.

(3) As applied by this Paragraph an attorney candidate and also other such persons who are entitled by their occupations to perform legal representation are considered attorneys.

Unauthorized Writership

Paragraph 248. The person who without authorization constructs petitions or documents for another as a business, commits a misdemeanor and is to be punished by monetary fine punishment.

Violation of a Seal

Paragraph 249. (1) The person who removes or damages a seal used in the sealing of property or opens a sealed room serving for the safekeeping of property commits a misdemeanor and is to be punished by monetary fine punishment.

(2) The person who removes seized goods from distraint commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Title VII

Offenses Against the Purity of Public Life

Bribe

Paragraph 250. (1) The official person who requests a benefit in connection with the performance of his duties or accepts such benefit or the promise of same, or agrees with one accepting or requesting such benefit, commits felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging from one year to five years is the offense is committed

a) by an official person in a leadership position or one authorized to act in more important matters,

b) by some other official person in a more important matter.

(3) According to the differentiation in sections (1) and (2) the perpetrator is to be punished by loss of freedom ranging from one year to five years and from two years to eight years respectively if he violates his official obligations, exceeds his authority or otherwise abuses his official position in order to obtain the benefit.

Paragraph 251. (1) An employee or member of a national organ, cooperative or association who requests a benefit for violating his obligation or accepts a benefit or promise of the same, or agrees with one requesting or accepting such benefit, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) If the perpetrator violates his obligation to gain the benefit, he commits a felony and is to be punished by loss of freedom ranging to three years.

Paragraph 252. (1) That employee or member of a national organ, cooperative or association who is authorized to act independently, who requests a benefit in connection with activity or accepts such benefit or promise of same, or who agrees with one requesting or accepting such benefit, commits misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging from one year to five years if the perpetrator violates his obligation to gain the benefit.

Paragraph 253. (1) The person who gives or promises such benefit to an official person or to another with respect to him [official person] which may influence the official person in his activity to the disadvantage of the public interest, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The giver of bribe is to be punished for felony by loss of freedom ranging to three years if he gives or promises the benefit to induce the official person to violate his obligation of office, exceed his authority or otherwise abuse his official position.

(3) The perpetrator of offense defined in section (1) cannot be punished if he gave or promised the benefit upon the official person's initiative because he was afraid of suffering illegal disadvantage in case of his unwillingness.

Paragraph 254. The person who gives or promises a benefit to an employee or member of a national organ, a cooperative or an association or with respect to

him to another person in order that he would violate his obligation commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Paragraph 255. The person who requests or accepts a benefit in order to publicize or conceal something in the press or by means of other mass communication media commits a felony and is to be punished by loss of freedom ranging to three years.

Influence Speculation Peddling

Paragraph 256. (1) The person who claiming to have influence with an official person requests or accepts a benefit for himself or for another commits felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging from one year to five years if the perpetrator

- a) states or makes it appear like he is bribing an official person,
- b) passes himself off as an official person,
- c) commits the offense as a business.

(3) The person who commits the offense defined in section (1) involving an employee or member of a national organ, cooperative or association is to be punished for misdemeanor by loss of freedom ranging to one year, in case of businesslike activity for felony by loss of freedom ranging to three years.

Persecution of a Person Making a Report in the Public Interest

Paragraph 257. The person who takes disadvantaging measures against a person who made a report in the public interest because of his report, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Confiscation

Paragraph 258. (1) The object [thing] which in the cases of Paragraphs 250 through 256 is the subject of the property benefit thus given, must be confiscated.

(2) If the subject of property advantage is not an object, the perpetrator must be required to pay a sum corresponding to the value of the benefit.

Chapter XVI

Offenses Against the Public Order

Title I

Offenses Against Public Safety [Public Endangerment]

Causing Public Danger

Paragraph 259. (1) The person who causes public danger by setting fires, causing floods or releasing the effects of the destructive energies of explosive, radiation or other materials, or who hinders the avoidance of

public danger or the lessening of its consequences, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The penalty is loss of freedom ranging from five years to ten years if the offense is committed

a) in criminal association,

b) causing particularly great material damage.

(3) The penalty is loss of freedom ranging from five years to fifteen years if the causing of public danger results in the death of one or more people.

(4) The person who commits the causing of public danger out of carelessness is to be punished for misdemeanor by loss of freedom ranging to three years, in the case of particularly great material damage to five years, in the case of the death of one or more people ranging from two years to eight years.

(5) The person who commits preparation aimed at causing public danger is to be punished for felony by loss of freedom ranging to three years.

(6) Punishment of the person who voluntarily terminates the public danger before any damaging consequences result from it, may be mitigated without limit.

Interference in the Operation of a Plant of Public Interest

Paragraph 240. (1) The person who disturbs the operation of a plant of public interest by damaging its equipment, lines or in another way to a significant extent, commits a felony and is to be punished by loss of freedom ranging to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the offense is committed in criminal association, from five years to fifteen years if it is committed by causing particularly great material damage.

(3) The person who commits the offense out of carelessness it to be punished for misdemeanor by loss of freedom ranging to three years, in the case of particularly great damage to property by loss of freedom ranging to five years.

(4) As applied in this Paragraph, plants of public interest are the public works, mass transportation operation in public traffic, communication plants, as well as plants producing war materials, energy or raw materials intended for use in factories.

Terrorist Activity

Paragraph 241. (1) The person who deprives another of his personal freedom, or gains control over significant material goods and makes the release of the person to freedom or leaving the material goods undamaged or returning them conditioned upon the fulfillment of demands made on a state organ or on social organizations, commits a felony and is to be punished by loss of freedom ranging from five years to fifteen years.

(2) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if the terrorist activity is committed

a) causing death or particularly severe damage,

b) in the time of war.

(3) The person who commits preparation aimed at terrorist activity is to be punished for felony by loss of freedom ranging from one year to five years.

(4) The person who obtains reliable information that commission of a terrorist act is in preparation and does not make a report of this to the authorities as soon as able to do so commits a felony and is to be punished by loss of freedom ranging to three years.

(5) Punishment of the person who abandons the terrorist act before any severe consequence would derive from it, may be mitigated without limit.

Gaining Control of an Aircraft

Paragraph 262. (1) The person who obtains for himself control over the vehicle on the deck of an aircraft by using violence, threats or placing another into an unconscious state or in a condition unable to defend himself, commits a felony and is to be punished by loss of freedom ranging from five years to ten years.

(2) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if the offense causes the death of one or more people.

(3) The person who commits preparation aimed at gaining control over an aircraft is to be punished for felony ranging from two years to eight years.

(4) Punishment of the person who abandons the offense before severe consequences derive from it may be mitigated without limit.

Abuse of Explosive Materials, Blasting Materials, Firearms or Ammunition

Paragraph 263. (1) The person who prepares, obtains, keeps explosive materials, blasting materials or equipment serving the utilization of these without a permit, or transfers such material to a person not authorized to keep them commits a felony and is to be punished by loss of freedom ranging to five years. (2) The person who violates the regulations concerning the preparation, keeping, transfer or traffic of firearms and ammunition commits a felony and is to be punished according to the penalties defined in section (1).

Abuse of Radioactive Materials

Paragraph 264. The person who illegally produces, obtains, keeps, sells radioactive material or preparation dangerous to health or transfers such material to a person not authorized to have it, commits a felony and is to be punished by loss of freedom ranging to five years.

Abuse of Poison

Paragraph 265. The person who illegally produces, keeps or sells poison as well as the person who fails to take the prescribed measures to prevent the abusive utilization of poisons and to prevent the endangerment of other persons, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Indolence as Danger to the Public

Paragraph 266. That person able to work, who conducts a way of life of avoiding work, if he earlier has been punished for the misdemeanor or rule-breaking of indolence as danger to the public and two years have not yet elapsed since completion of his punishment or since the end of its enforceability, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment. Banishment is also in order as supplementary punishment.

Organizing Prohibited Games of Chance

Paragraph 267. The person who systematically organizes prohibited games of chance or makes a room available for such, commits misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment. Banishment is also in order as supplementary punishment.

Title II.

Offenses Against Public Tranquility

Agitation Against the Law or Regulations of the Authorities

Paragraph 268. The person who agitates for disobedience of the law or of

other statute, or against regulations issued by the authorities, before the general public, commits a felony and is to be punished by loss of freedom ranging to three years.

Violation of Community Feeling

Paragraph 249. (1) The person who before others commits an act suitable to generate hatred against

- a) the Hungarian nation or some nationality,
- b) the Hungarian People's Republic's constitutional order,
- c) the Hungarian People's Republic's links in alliance, friendship or other international aspects of cooperation,

d) some people, denomination or race, and further -- because of their socialist convictions -- against certain groups or individuals, is to be punished for misdemeanor by loss of freedom ranging to two years.

(2) The person who before others uses an expression insulting or belittling the Hungarian nation, the constitutional order of the Hungarian People's Republic, and further -- because of their nationality, denomination, race or socialist convictions -- certain groups or persons, or commits other such acts, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(3) The person who commits the offense defined in sections (1) or (2) as member of a group or before the general public, is to be punished for felony by loss of freedom ranging to three years, or for misdemeanor by loss of freedom ranging to two years respectively.

Spreading of Rumors

Paragraph 270. (1) The person who before others states or propagandizes an untrue fact -- or a true fact distorted in such a way -- when it is suitable to disturb public tranquility, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty is loss of freedom ranging to three years, for felony, if the spreading of rumors is committed at the scene of public danger or in time of war.

Rowdiness [Disorderly Conduct]

Paragraph 271. (1) The person who exhibits such provocatively antisocial, violent behavior which is suitable to generate indignation or panic in others, if a more severe offense does not take place, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to three years if the rowdiness is committed

a) in a group,

b) by severely disturbing the public's tranquility.

(3) Banishment is also in order as supplementary punishment.

Violation of Public Modesty

Paragraph 272. The person who sells, publicly exhibits, introduces or obtains for the purpose of sale or public exhibition an object violating public modesty, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

Taking the Law into One's Own Hands [Vigilanteism]

Paragraph 273. (1) The person who for the purpose of gaining validity for a just demand or for a demand deemed to be just for some property forces another by violence or threats to do something, not do or endure something, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) Taking the law into one's own hands does not take place if application of violence or threat is a permissible means for gaining validity for the demand.

Title III.

Offenses Against Public Confidence

Falsification of Public Documents

Paragraph 274. (1) The person who

a) prepares a false public document or falsifies the contents of a public document,

b) uses a false public document prepared by another or a falsified real public document or one made out for a different name,
c) cooperates in including incorrect data, facts or statements in a public document concerning the existence, alteration or termination of rights or obligations, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person who commits the public document falsification defined in point c) of section (1) out of carelessness, is to be punished for a misdemeanor by monetary fine punishment.

Paragraph 275. The official person who by abusing his official authority
a) prepares a false public document or falsifies the contents of a public document,

b) falsely includes an essential fact in a public document,
commits a felony and is to be punished by loss of freedom ranging to five years.

Falsification of Private Documents

Paragraph 276. The person who uses false or falsified private documents or a private document the contents of which are untrue to prove the existence, alteration or termination of rights or obligations, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Abuse of Documents

Paragraph 277. (1) The person who illegally obtains a public document which is not or not exclusively his own, from another, without his agreement, or destroys, damages it or keeps it as a secret, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The person who commits the act defined in section (1) involving a private document, for the purpose of causing damage to another, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Providing False Statistical Data

Paragraph 278. The person who furnishes statistical data not corresponding to reality, or in connection with furnishing data gives information not corresponding to reality, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Title IV.

Offenses Against Public Health

Abuse Involving Harmful Public Consumption Items

Paragraph 279. (1) The person who prepares or keeps for the purpose of sale

such public consumption items which are harmful to health, commits a misdemeanor and is to be punished by loss of freedom ranging to one year corrective-educational labor or monetary fine punishment.

(2) The person who sells a harmful public consumption item, commits a felony and is to be punished by loss of freedom ranging to three years.

(3) The person who commits the offense defined in section (2) out of carelessness, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Damaging the Environment

Paragraph 280. (1) The person who contaminates, damages, or destroys to a significant extent the object under environmental protection, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging to five years if damaging the environment causes danger to life.

(3) The person who commits the damaging of environment out of carelessness is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment, in case of section (2) by loss of freedom ranging to three years.

Causing Harm to Nature

Paragraph 281. (1) The person who

a) destroys or collects plants, animals or eggs descending from such, which are under increased protection,

b) severely damages a cave or protected geological formation,

c) disadvantageously alters an area under environmental protection, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the damaging of environment causes mass death of the protected object in the case of section (1) point a), or destruction in the cases of points b) and c).

(3) The person who commits the damaging of environment defined in section (2) out of carelessness, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Abuse of Narcotics

Paragraph 232. (1) The person who prepares, obtains, keeps, sells, brings into the country, removes from there, or transports across the country's territory any narcotic materials suitable for pathological enjoyment by violating the regulations issued by the authorities, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The person who gives narcotic materials suitable for pathological enjoyment to a person under eighteen years of age, is to be punished according to section (1).

(3) The penalty is loss of freedom ranging from two years to eight years if the offence is committed

a) as a business,

b) in criminal association,

c) involving narcotic materials of significant quantities or value.

(4) The person who commits preparation aimed at abusing narcotics as defined in section (1) is to be punished for misdemeanor by loss of freedom ranging to two years.

(5) The person who prepares, obtains, or keeps small quantities of narcotic materials suitable for pathological enjoyment not for the purpose of sale, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Inducement of Narcotic Habit

Paragraph 283. The person who provides assistance to a person under eighteen years of age for the pathological enjoyment of narcotic materials or drugs, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Violation of Quarantine Rules

Paragraph 284. (1) The person who violates the rules of quarantine, contagious disease alert or watch ordered for the purpose of preventing the importation or spreading of a contagious disease subject to mandatory quarantine, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The person who violates the rules of isolation, contagious disease alert or watch ordered at the time of epidemic, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(3) The person who violates the rules of quarantine, other restrictions or alert ordered for the purpose of preventing the importation and exportation or spreading of dangerous parasites of contagious animal diseases or ones damaging the vegetation, commits a misdemeanor and is to be punished by loss of freedom ranging to one year corrective-educational labor or monetary fine punishment.

Quackery

Paragraph 285. (1) The person who illegally, for compensation or regularly performs activity belonging within the sphere of medical practice, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the quackery is committed by imitating being entitled to practice medicine.

(3) As applied in this Paragraph, a person is entitled to practice medicine who has a medical diploma earned at a domestic university or earned at a foreign university and domesticated (furnished with an appendix of equivalency), or the foreign citizen who may perform medical activity on the basis of permit by the minister of health without the domestication of his diploma, provided in each case that he does not stand under the effect of prohibition to perform medical activity.

Confiscation

Paragraph 286. In case of abuse of explosive material, blasting material, firearm or ammunition (Paragraph 263), radioactive material (Paragraph 264), poison (Paragraph 265), harmful public consumption item (Paragraph 279) or narcotics (Paragraph 282) the thing with which the offense was committed must be confiscated if it is the perpetrator's property, or even otherwise if possessing it endangers the public safety; but Paragraph 77 section (4) cannot be applied.

Chapter XVII.

Economic Offenses

Title I

Offenses which Cause Harm to the Economic Responsibilities

Violating the Economic Operating Responsibility

Paragraph 227. (1) The person who breaks his obligation defined by statute or in the regulations of an organ authorized to issue statutes, concerning the production, use, sale, reporting, making available, keeping in stock or handling of a product, and by this, even if out of carelessness, damages the interests of the national ["people's"] economy, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense causes damage to the national economy.

Misleading the National Economy's Organs

Paragraph 233. (1) The person who for the purpose of obtaining illegal economic advantage misleads an organ of the national economy authorized to make decisions and by doing this causes significant disadvantage, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense causes disadvantage to the national economy.

Frustration of Economic Control

Paragraph 289. The person who wholly or partially frustrates the economic control by systematic failure to keep the accounting records prescribed by statute or in the regulations of an organ authorized to issue statutes or by some other means, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Violating the Investment Discipline

Paragraph 290. (1) The person who by violating the obligation or prohibition contained in the statutes concerning investments

a) uses a monetary instrument of the state authorized for the purpose of a specific investment for something other than its purpose,

b) accomplishes an investment with a monetary instrument derived not from the source ordered for it,

and by this significantly injures the interests tied to the order of investments, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense causes disadvantage to the national economy.

Violation of Financial Discipline

Paragraph 291. (1) The person who by violating the obligation or prohibition

included in the statutes concerning the credit system and the flow of money

a) extends or uses credit,

b) uses credit extended for a specific purpose for another purpose,

and by this significantly injures the interests tied to the order of the credit system or of the flow of money, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense causes disadvantage to the national economy.

Placing Bad Quality Product Into Circulation

Paragraph 292. (1) That employee of an economic operating organization who fills a management position, who takes measures for the sale, placement into use or marketing significant quantities or value of poor quality product as good quality product, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person who commits the offense out of carelessness is to be punished for misdemeanor by loss of freedom ranging to three years, corrective-educational labor or monetary fine punishment.

Paragraph 293. The person who violates the rules regarding the establishment of the product's quality and by this makes it possible for significant amounts or value of product to be sold, released for use or placed on the market as better quality than it actually is, commits a felony and is to be punished by loss of freedom ranging to three years.

Paragraph 294. (1) A product belonging under the effect of national standards is of poor quality if it does not meet even the lowest quality requirements defined in the standard or — in case of possibility of deviating from this — in the agreement of the parties.

(2) If in foreign trade the product quality is not determined on the basis of national standard, then it is of poor quality if it does not fulfill the contractual specifications and because of this it is not suitable to fulfill the contract or is suitable only by causing a significant disadvantage.

(3) Except for the cases of sections (1) and (2) that product is of poor quality which cannot be used for its purpose or if its usefulness is decreased to a significant extent.

False Witnessing of Quality

Paragraph 295. (1) The person who witnesses incorrect data in a document for witnessing quality concerning the quality of significant amount or value of product, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person who commits the act out of carelessness is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

False Product Marking

Paragraph 296. The person who places on the market significant quantity of product with marking to which it does not correspond, or takes measures for

placing it on the market, inasmuch as a more severe offense does not take place, commits a felony and is to be punished by loss of freedom ranging to three years.

Unauthorized Foreign Trade Activity

Paragraph 297. (1) The person who conducts foreign trade activity without appropriate authorization, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense causes disadvantage to the national economy.

Foreign Trade Activity Without Permit

Paragraph 298. (1) That person authorized to conduct foreign trade activity who conducts foreign trade activity tied to permit without a permit and by this injures the interests of the foreign trade, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense causes disadvantage to the national economy.

Title VI

Crimes Injuring the Order of Economic Operation

Speculation

Paragraph 299. (1) The person who

a) illegally conducts trade activity or maintains an enterprise,
b) conducts economically unjustified intermediary trading of merchandise or speculates with it in another way suitable to increase the price, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.
(2) The penalty for felony is loss of freedom ranging to five years if the speculation is committed

a) as a business,
b) in criminal association,
c) involving significant amounts or value of merchandise,
d) by violating the management of foreign currency (Paragraph 309 section (1)), in connection with smuggling or profiteering from customs duty violation (Paragraph 312 section (1)),
e) under cover of a legal operation of an economic operating organ.
(3) The penalty is loss of freedom ranging from two years to eight years if the offence causes disadvantage to the national economy.

Paragraph 300. The person who lends money as a business, commits a felony and is to be punished by loss of freedom ranging to three years.

Price Gouging

Paragraph 301. (1) The person who

a) asks for, specifies or accepts a higher price for merchandise than the price set by the authorities or the price otherwise compulsorily established for him and binding on him,

b) in the absence of a price established by the authorities, sets or maintains the merchandise's price in such a way or at such level that it includes indecent profit, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the price gouging is committed

a) as a business,

b) in criminal association,

c) for significant quantity of merchandise,

d) for the purpose of obtaining a significant amount of profit.

(3) The penalty is loss of freedom ranging from two years to eight years if the offense causes disadvantage to the national economy.

(4) The person who commits the offense out of carelessness, commits a misdemeanor and is to be punished by monetary fine punishment.

Paragraph 302. (1) It is also price gouging according to Paragraph 301 section (1) point a) if price corresponding to price set by the authorities for better quality product is asked for, specified or accepted for the product than its actual quality is.

(2) Paragraph 301 section (1) point b) does not apply to the person who does not exceed the guide price set or approved by the authorities.

Endangering the Public's Supply

Paragraph 303. (1) The person who by injuring the interests of public supply

a) destroys, renders useless, hides, keeps in secret or uses an inventory of product under his control in spite of statutory prohibition or the rules of regular economic operation,

b) acquires product at an extent excessive for his needs and by this makes it significantly difficult for others to obtain it,

c) obtains authorization by deceit for acquiring, selling or transporting a product, or speculates in such,

commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to five years if the offense is committed involving significant amounts or value of product.

(3) The person who commits the offense out of carelessness is to be punished for misdemeanor by monetary fine punishment.

Title III

Counterfeiting Money or Stamps

Counterfeiting Money

Paragraph 304. (1) The person who

a) imitates or counterfeits money in circulation for the purpose of placing it into circulation,

b) obtains false or counterfeit money for the purpose of placing it into circulation,

c) places false or counterfeit money into circulation,

commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The penalty is loss of freedom ranging from five years to ten years if the counterfeiting of money is committed

a) in criminal association,

b) involving large quantities or value of money.

(3) The penalty is loss of freedom ranging to five years if the subject of counterfeiting is change [coin], or if the quantity or value of the counterfeited money is not significant.

(4) The person who commits preparation aimed at counterfeiting money is to be punished for misdemeanor by loss of freedom ranging to one year.

(5) In case of counterfeiting of money, confiscation of property is also in order as supplementary punishment.

Paragraph 305. From the viewpoint of applying Paragraph 304

a) such alteration of money withdrawn from circulation that it generates the appearance of money in circulation must also be considered to be imitation of money in circulation,

b) application or removal of designation serving to designate that the money is valid only in a specified country, and further, decreasing the noble metal content of money must also be considered to be counterfeiting of money.

Issuing Counterfeit Money

Paragraph 306. (1) The person who false or counterfeit money into circulation

obtained legally as real or non-counterfeit money commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed involving large quantity or value of money.

Stamp Counterfeiting

Paragraph 307. (1) The person who for the purpose of placing into circulation or use

a) imitates or counterfeits stamp,

b) obtains false or counterfeit stamp,

commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person who places into circulation or uses false, counterfeit or used stamp as real or unused, is also to be punished according to section (1).

(3) The penalty for felony is loss of freedom ranging to five years if the counterfeiting of stamp is committed

a) in criminal association,

b) involving large quantity or value of stamps.

(4) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the quantity or value of the false, counterfeit or reused stamps is not significant.

Paragraph 308. (1) As applied in Paragraph 307, placing into circulation must

be understood to include placement into circulation for the purposes of stamp collecting, and counterfeiting [must be understood to include] illegal alteration of the stamp serving the purpose of [stamp] collecting.

(2) Foreign stamps enjoy the same protection as domestic stamps.

Title IV

Financial Crimes

Violation of Foreign Currency Management

Paragraph 309. (1) The person who violates some obligation or prohibition defined in the statutes dealing with planned management of foreign currency, if he commits the offense involving a minor value, is to be punished for misdemeanor by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed

- a) as a business,
- b) in criminal association,
- c) involving a major value,
- d) involving objects of museum nature.

(3) The penalty is loss of freedom ranging from one year to five years if the offense is committed

- a) involving a significant value,
- b) involving a larger value as a business or in criminal association.

(4) The penalty is loss of freedom ranging from two years to eight years if the offense is committed

a) involving a particularly large value,

b) involving a significant value as a business or in criminal association.

(5) The person who commits the offense involving a significant value and out of carelessness, is to be punished for misdemeanor by monetary fine punishment.

Tax Cheating

Paragraph 310. (1) The person who untruthfully presents or conceals before the authorities a fact (data) significant from the viewpoint of establishing the tax obligation, and by this or by other deceptive behavior decreases the tax revenue, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if due to the offense the tax revenue decreases by a significant amount.

Abuse of Production Tax

Paragraph 311. (1) The person who produces a product which is subject to production tax, in the absence of conditions established by statute or without permit from the authorities, conceals it from production tax control or obtains a product so concealed by another for the purpose of obtaining material profit, hides it or cooperates in its alienation, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if due to the offense the tax revenue decreased by a significant amount.

Smuggling and Profiteering from Customs Duty Violation

Paragraph 312. (1) The person who

a) conceals merchandise subject to customs duty from customs inspection or makes an untrue statement before the authorities concerning significant conditions from the customs viewpoint (smuggling),

b) obtains a smuggled item subject to customs duty for the purpose of material profit, hides it or cooperates in its alienation (profiteering from customs duty violation),

commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed

a) as a business,

b) in criminal association,

c) involving significant value of merchandise subject to customs duty,

d) involving objects of museum nature.

(3) The penalty is loss of freedom ranging to five years if the offense is committed as a business or in criminal association involving significant value of merchandise subject to customs duty.

Check Abuse

Paragraph 313. The person who issues or places into circulation a check without coverage, unless a more severe offense takes place, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Title V.

Miscellaneous Regulations

Confiscation

Paragraph 314. (1) In case of violation of the economic operating obligations, speculation, price gouging, endangerment of the public's supply, violation of foreign currency management and abuse of production tax, the item in the perpetrator's possession which was involved in committing the offense must be confiscated.

(2) Confiscation is in order also when the item is not the perpetrator's property but the owner had previous knowledge of the commission of the offense.

(3) In case of smuggling and profiteering from customs duty violation the property involved in the offense must be confiscated except if it is the property of a national organ or cooperative.

(4) Instead of confiscation a requirement to pay an amount equivalent to the value subject to confiscation is in order also when confiscation would mean an unfair disadvantage to the perpetrator not in proportion with the weight of the offense.

(5) Confiscation or requirement to pay the value subject to confiscation may be omitted in whole or in part if it would mean an unfair disadvantage to the perpetrator not in proportion with the weight of the offense.

Interpretive Regulation

Paragraph 315. As applied in this Chapter, merchandise must be understood to include services of industrial or other economic character, and price [must be understood to include] any type of offsetting service of material value owed for the merchandise (service).

Chapter XVIII.

Crimes Against Property

Theft

Paragraph 316. (1) The person who takes a foreign object away from another in order to illegally possess it, commits theft.

(2) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment in the theft involving a value of the magnitude rendering it rulebreaking is committed

- a) in criminal association,
- b) at the scene of public danger,
- c) as a business,
- d) by violence against property,
- e) as a special repeat offender,

- f) by entering into a room or an enclosed area belonging to it by means of deceit or without the knowledge and agreement of the proprietor (user),
- g) with the use of a false or stolen key,
- h) to the injury of a person jointly using an apartment or similar room with the perpetrator,
- i) by means of pickpocket act,
- j) using another's condition of being unable to avoid the offense.

(3) The penalty is loss of freedom ranging to two years if the theft is committed involving a minor value.

(4) The penalty for felony is loss of freedom ranging to three years if

- a) the theft is committed involving a larger value,
- b) the theft committed involving a minor value was committed

1. in the manner defined in points a) through d) of section (2),

2. involving an item of museum nature.

(5) The penalty is loss of freedom ranging from one year to five years if the theft committed

- a) involves a significant value,
- b) the theft committed involving a larger value was committed in the manner defined in points a) through d) of section (2).

(6) The penalty is loss of freedom ranging from two years to eight years if the theft is committed

- a) involving a particularly large value,
- b) theft committed involving a significant value was committed in the manner defined in points a) through d) of section (2).

Embezzlement

Paragraph 317. (1) The person who illegally misappropriates a foreign object entrusted to his care, or treats it as his own, commits embezzlement.

(2) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the embezzlement involving a value of the magnitude rendering it a rulebreaking is committed

- a) in criminal association,
- b) at the scene of public danger,
- c) as a business,
- d) as special repeat offender.

(3) The penalty is loss of freedom ranging to two years if the embezzlement is committed involving a minor value.

(4) The penalty for felony is loss of freedom ranging to three years if the embezzlement is committed

- a) involving a larger value,
- b) embezzlement involving a minor value is committed in a manner defined by points a) through c) of section (2).

(5) The penalty is loss of freedom ranging from one year to five years if the embezzlement is committed

- a) involving a significant value,
- b) embezzlement committed involving a larger value is committed in the manner defined in points a) through c) of section (2).

(6) The penalty is loss of freedom ranging from two years to eight years if

the embezzlement is committed

- a) involving a particularly large value,
- b) the embezzlement committed involving a significant value was committed in the manner defined in points a) through c) of section (2).

Swindle

Paragraph 318. (1) The person who for the purpose of illegally obtaining profit misleads another or keeps another in a misbelief and thereby causes damage, commits swindle.

(2) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the swindle causing damage not exceeding the value limit for rulebreaking is committed

- a) in criminal association,
- b) at the scene of public danger,
- c) as a business,
- d) as special repeat offender.

(3) The penalty is loss of freedom ranging to two years if the swindle causes minor damage.

(4) The penalty for felony is loss of freedom ranging to three years if the swindle

- a) causes larger damage,
- b) swindle causing minor damage is committed in a manner defined in points a) through c) of section (2).

(5) The penalty is loss of freedom ranging from one year to five years if

a) the swindle causes significant damage,

b) swindle causing larger damage is committed in a manner defined in points a) through c) of section (2).

(6) The penalty is loss of freedom ranging from two years to eight years if

a) the swindle causes particularly large damage,

b) swindle causing significant damage is committed in a manner defined by points a) through c) of section (2).

Unfaithful Management

Paragraph 319. (1) The person assigned to manage foreign [another's] property and who causes material disadvantage by violating his obligation deriving from this, commits unfaithful management.

(2) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if the unfaithful management causes minor material disadvantage.

(3) The penalty for felony is

a) loss of freedom ranging to three years if the unfaithful management causes a larger material disadvantage,

b) loss of freedom ranging from one year to five years if the unfaithful management causes significant material disadvantage,

c) loss of freedom ranging from two years to eight years if the unfaithful management causes particularly large material disadvantage.

Negligent Management

Paragraph 320. (1) The person assigned to manage or supervise social property and who causes material disadvantage out of carelessness by violating or neglecting his responsibility deriving from this, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The penalty is loss of freedom ranging to three years if the negligent management causes particularly large material disadvantage.

Robbery

Paragraph 321. (1) The person who takes a foreign object away from another for the purpose of illegally possessing it, [and does this] by using violence or direct threat against life or bodily integrity for this purpose against someone, or places someone in an unconscious condition or a condition of being unable to defend himself, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) It is also robbery if the thief caught in the act uses violence or direct threat against life or bodily integrity for the purpose of keeping the item.

(3) The penalty is loss of freedom ranging from five years to ten years if the robbery is committed

- a) armed,
- b) involving significant value,
- c) in criminal association or in a group.

(4) The penalty is loss of freedom ranging from five years to fifteen years if the robbery is committed

a) involving particularly large value,

b) involving significant value [and] armed, in criminal association or in a group.

Stripping

Paragraph 322. (1) The person who, for the purpose of illegally acquiring it,

a) takes a foreign object away from another by getting him drunk for this purpose,

b) takes a foreign object away from another person who is under the effect of violence or direct threat against life or bodily integrity used by the perpetrator during the commission of another offense,

commits a felony and is to be punished by loss of freedom ranging to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the stripping is committed

a) involving significant value,

b) in criminal association or in a group.

Extortion

Paragraph 323. (1) The person who for the purpose of illegally gaining profit forces another by violence or threat to do something, not do or tolerate something and causes damage by this, commits a felony and is to be punished by loss of freedom ranging to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the extortion is committed

a) in criminal association,

b) by threats against life or bodily integrity or other similarly severe threats,

c) as an official person by using this character, or by imitating official assignment or capacity.

Damaging

Paragraph 324. (1) The person who causes damage by destroying or damaging a foreign property item, commits damaging.

(2) The penalty for misdemeanor is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment if

a) the damaging causes minor loss,

b) the damaging causing a loss not exceeding the value limit of rulebreaking is committed in criminal association or as a special repeat offender.

(3) The person who

a) causes a larger loss,

b) damages an item of museum nature or a[n art or historical] monument is to be punished for felony by loss of freedom ranging to three years.

(4) The penalty is loss of freedom ranging from one year to five years if the damaging

a) causes significant loss,

b) destroys an item of museum nature or a monument.

(5) The penalty is loss of freedom ranging from two years to eight years if the damaging causes particularly large loss.

(6) The person who out of carelessness causes significant loss in social property by damaging it, is to be punished for misdemeanor by monetary fine punishment, if he causes particularly large loss, he is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Illegal Acquisition

Paragraph 325. The person who appropriates for himself a foreign object he found, or does not give it within eight days to the authorities or back to the person who lost it, and also who appropriates for himself a foreign object which came to him unintentionally or in error, or who does not return such in eight days, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Receiving of Stolen Goods

Paragraph 326. (1) The person who obtains or hides item(s) derived from theft, embezzlement, swindle, unfaithful management, robbery, stripping, extortion, illegal appropriation or handling of stolen goods for the purpose of gaining material profit, or who cooperates in their alienation, commits [the offense of] receiving stolen goods.

(2) The penalty for misdemeanor is loss of freedom ranging to one year,

corrective-educational labor or monetary fine punishment if the receiving of stolen goods is committed

a) involving minor value,

b) involving value of [the magnitude range of] rulebreaking [and] as a business or as special repeat offender.

(3) The penalty for felony is loss of freedom ranging to three years if the receiving of stolen property is committed involving a larger value or an item of museum nature.

(4) The penalty is loss of freedom ranging from one year to five years if the receiving of stolen property is committed

a) involving significant value,

b) involving larger value [and] as a business.

(5) The penalty is loss of freedom ranging from two years to eight years if the receiving of stolen property is committed involving particularly large value.

Arbitrary Taking of a Vehicle

Paragraph 327. (1) The person who takes away from another another's motor driven vehicle for the purpose of unlawful use, or unlawfully uses a vehicle taken in such manner or such vehicle entrusted to his care, commits a misdemeanor and is to be punished by loss of freedom ranging to two years.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed

a) by entering into a room or enclosed area belonging to it without the right

to enter,

b) in criminal association.

(3) The penalty is loss of freedom ranging to five years if the offense is committed using violence or direct threat aimed against life or bodily integrity.

Cheating the Customers

Paragraph 323. (1) The person who in the process of direct selling of merchandise to customers conducts activity causing damage to the customers by false weighing or calculation or by worsening the quality of the merchandise, if more severe offense does not take place, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

(2) The person who commits the acts listed in section (1) during a transaction of economic nature to the injury of the ones giving the order, is also to be punished according to section (1).

(3) The penalty for felony is loss of freedom ranging to three years if the damaging of customers is committed as a business.

Usurping

Paragraph 329. The person who

a) makes the intellectual creation, invention, innovation or industrial sample of another appear as his own and thus causes material disadvantage to the rightful party,

b) by abusing his sphere of activity fulfilled at an economic operating organization, makes the utilization or placing into effect the intellectual creation, invention, innovation or industrial sample of another conditioned upon sharing in its prize or in the profit or gain derived from it, commits a felony and is to be punished by loss of freedom ranging to three years.

Violation of Credit

Paragraph 330. The person who withdraws the coverage of credit fully or in part or in another way frustrates satisfaction of the creditor by the coverage commits a misdemeanor and is to be punished by loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment.

Complaint [by an individual]

Paragraph 331. The perpetrator, if he is related to the injured party, is punishable for theft, embezzlement, swindle, unfaithful management, damaging, unauthorized appropriation, receiving stolen goods as well as arbitrary taking of a vehicle, [any of these] causing loss to personal property, only upon complaint.

Active Repentance

Paragraph 332. The penalty may be mitigated without limit -- even omitted in cases deserving special consideration --, if the perpetrator of theft, embezzlement, swindle, unfaithful management, damaging, receiving of stolen

goods, unlawful expropriation or arbitrary taking of a vehicle -- before the act would be discovered -- would report it to the authorities or to the damaged party and makes reimbursement for the damage, or does everything that can be expected of him in order to reimburse for the damage.

Interpretive Regulations

Paragraph 333. As applied in this Chapter

1. thing [item] is: the electrical and also other economically usable energy, also any such documents embodying entitlement to property which [document] in itself insures authority over the property value or entitlement witnessed in it,
2. damage: value decrease caused in the property by the offense,
3. social property: property of the state, some cooperative, social organization and association as well as another's property item, including here also the social property of another socialist country, in the use of, under the management of, or available to these,
4. offenses of similar character from the viewpoint of being a special repeat offender are the offenses against property.

Chapter XIX

Crimes Against Military [National Defense] Obligation

Violation of the Obligation to Report for Service

Paragraph 334. (1) That person subject to compulsory military service who does

not fulfill his obligation of reporting for military service, commits a misdemeanor and is to be punished by loss of freedom ranging to two years, at the time of war [is to be punished] for felony by loss of freedom ranging from one year to five years.

(2) The person who commits the offense out of carelessness, is to be punished for misdemeanor according to the differentiation written in section (1) by loss of freedom ranging to one year, and to three years, respectively.

Evading Military Service

Paragraph 335. (1) That person subject to compulsory military service who, for the purpose of excepting himself from military service, does not fulfill his obligation to register or report for service, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The person subject to compulsory military service who for the purpose defined in section (1)

a) mutilates his body, damages his health or conducts deceptive behavior,
b) without permission departs for abroad or lastingly stays abroad, is to be punished by loss of freedom ranging to five years.

(3) In time of war the perpetrator of an offense defined in sections (1) and (2) is to be punished by loss of freedom ranging from five years to fifteen years.

Refusal to Perform Military Service

Paragraph 336. The person subject to compulsory military service who refuses

to perform his military service [obligation] commits a felony and is to be punished by loss of freedom ranging to five years, in time of war ranging from five years to fifteen years.

Failure to Register as Required

Paragraph 337. The person subject to compulsory military service who in time of war

- a) fails to register as required, commits a misdemeanor and is to be punished by loss of freedom ranging to one year,
- b) does not fulfill his obligation to report as required, commits a felony and is to be punished by loss of freedom ranging to three years.

Obstructing the Fulfillment of Military Obligation

Paragraph 338. (1) The person who commits an act the purpose of which is to frustrate a person subject to compulsory military service in fulfilling his obligation designated in Paragraph 334 and in Paragraph 337, commits a misdemeanor or felony respectively according to the differentiations in these Paragraphs and is to be punished by the punishments defined therein.

(2) The person who commits an act the purpose of which is to get a person subject to compulsory military service, out of [having to perform] his military service, in the manner defined in Paragraph 335, is to be punished according to the differentiation written therein.

Violation of the Civil Defense Obligation

Paragraph 339. (1) The person who in time of war does not perform his civil defense service, commits a felony and is to be punished by loss of freedom ranging to three years.

(2) The penalty is loss of freedom ranging from two years to eight years if the offense causes severe danger.

(3) The person who commits the offense defined in section (2) out of carelessness, is to be punished for misdemeanor by loss of freedom ranging to three years.

Violation of National Defense Work Obligation

Paragraph 340. The person obligated to perform work for the national defense, who severely violates this obligation by staying away or in another manner, commits a felony and is to be punished by loss of freedom ranging to three years.

Violation of the Obligation to Provide Supplies

Paragraph 341. The person who, in time of war, severely violates or evades his national defense obligation consisting of providing economic or material services, commits a felony and is to be punished by loss of freedom ranging to five years.

Active Repentance

Paragraph 342. The penalty may be mitigated without limit, if the perpetrator

of an offense defined in this Chapter voluntarily satisfies the obligation he failed to perform.

Chapter XX

Military Crimes

Title I

Service Crimes

Desertion

Paragraph 343. (1) The person who for the purpose of extricating himself from fulfilling his military obligation, voluntarily abandons his service post or stays away from there, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The penalty is loss of freedom ranging from two years to eight years if the desertion is committed

- a) armed,
- b) in group,
- c) during the performance of an important service or by using such service,
- d) by use of violence against a person.

(3) The person who escapes abroad is to be punished by loss of freedom ranging from five years to fifteen years.

(4) The person who escapes abroad in a manner defined in section (2) points a) through c) or who commits the desertion in time of war, is to be punished

by loss of freedom ranging from ten years to fifteen years, or for life, or by death.

(5) The person who commits preparation aimed at desertion as defined in sections (2) and (3) is to be punished for felony by loss of freedom ranging from one year to five years, in time of war from five years to fifteen years.

(6) In case of desertion defined in section (3) confiscation of property is also in order as supplementary punishment.

(7) Punishment of a perpetrator of desertion may be mitigated without limit if he voluntarily reports at the authorities.

Failure to Make a Report [to the Authorities]

Paragraph 344. The person who obtains information deserving credit that commission of desertion abroad is being prepared or that such a yet undiscovered offense has been committed and does not report this as soon as able to do so, commits a felony and is to be punished by loss of freedom ranging to three years. The perpetrator's relation cannot be punished for failure to make such report.

Arbitrary Departure [Absent Without Leave]

Paragraph 345. (1) The person who arbitrarily departs his service post or remains away from there, and if his absence exceeds twentyfour hours, commits a misdemeanor and is to be punished by loss of freedom ranging to one year, in time of war he is to be punished for felony by loss of freedom ranging from one year to five years.

(2) If the duration of arbitrary absence exceeds six days, the penalty for felony is loss of freedom ranging to three years, in time of war ranging from two years to eight years.

(3) If the arbitrary absence does not exceed twentyfour hours, but the perpetrator has on his record two valid punishments from earlier for such behavior, he is to be punished according to section (1).

Evasion of Service

Paragraph 346. (1) The person who mutilates his body, damages his health or conducts deceitful behavior for the purpose of extricating himself from the fulfillment of his military service, commits a felony and is to be punished by loss of freedom ranging from one year to five years, in time of war by loss of freedom ranging from ten years to fifteen years or for life, or by death.

(2) The person who commits the offense defined in section (1) for the purpose of temporarily extricating himself from the fulfillment of his military service, is to be punished for misdemeanor by loss of freedom ranging to one year, in time of war for felony by loss of freedom ranging from one year to five years.

(3) If the duration of the temporary extrication exceeds six days, the penalty for felony is loss of freedom ranging to three years, in time of war loss of freedom ranging from two years to eight years.

Refusal to Serve

Paragraph 347. The person who refuses to fulfill his military obligations, commits a felony and is to be punished by loss of freedom ranging from one year to five years, in time of war by loss of freedom ranging from ten years to fifteen years or for life, or by death.

Violation of Duties While in Service

Paragraph 348. (1) The person who in guard, watch or other readiness service violates the regulations regarding the performance of this, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to five years, in time of war ranging from two years to eight years if the offense involves the danger of significant disadvantage to the service.

(3) The penalty for felony is loss of freedom ranging from ten years to fifteen years or for life, or death, if the offense is committed in war situation and particularly large disadvantage results from it.

(4) The person who commits the offense out of carelessness is to be punished for misdemeanor in case of section (2) according to the differentiation made there, by loss of freedom ranging to one year and to three years respectively, in case of section (3) by loss of freedom ranging to five years.

Evasion of Carrying Out an Assignment in Service

Paragraph 349. (1) The person who extricates himself from performing an important task in service by deceit or absence, or who makes himself unsuitable to perform it, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years, in time of war ranging from one year to five years if the offense involves the danger of significant disadvantage to the service.

Violation of the Requirement to Report

Paragraph 350. (1) The person who does not make a report at the required time in a service matter, or makes an incorrect report, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years, in time of war ranging from one year to five years, if significant disadvantage results from the offense to the service.

Abuse of Service

Paragraph 351. (1) The person who abuses his service authority or position for the purpose of causing unlawful disadvantage or to obtain unlawful advantage, unless a more severe offense takes place, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years is significant disadvantage results from the offense.

Title II.

Insubordination

Mutiny

Paragraph 352. (1) The person who participates in such an open group resistance directed against the order and discipline of service, which significantly disturbs the performance of service tasks, commits a felony and is to be punished by loss of freedom ranging from two years to eight years.

(2) The mutiny's

a) originator, organizer and leader,

b) participant, if he uses violence against a superior or against a person taking steps against the mutiny,

is to be punished by loss of freedom ranging from five years to fifteen years.

(3) The

a) originator, organizer and leader, if the mutiny involves particularly severe consequences,

b) participant, if his act during the mutiny causes death or involves other particularly severe consequences,

are to be punished by loss of freedom ranging from ten years to fifteen years or for life, or by death.

(4) In time of war the penalty is loss of freedom ranging from five years to fifteen years in case of section (1); in case of section (2) and in a war situation [under attack?] in the case of section (1) [the penalty is] loss of freedom ranging from ten years to fifteen years or for life, or death.

(5) In case of section (1) the penalty of the person may be mitigated without limit who abandons the mutiny upon being called on to do so, before it would involve more severe consequences.

(6) The person who commits preparation aimed at mutiny is to be punished for felony by loss of freedom ranging from one year to five years, in time of war ranging from two years to eight years.

Failure to Prevent Mutiny

Paragraph 353. The person who does not prevent, according to his ability, a mutiny or preparation for it coming to his attention, or who does not report it without delay, commits a felony and is to be punished by loss of freedom ranging to three years.

Refusal to Carry Out Orders

Paragraph 354. (1) The person who does not carry out an order, commits a misdemeanor and is to be punished by loss of freedom ranging to one year; in case of committing this in a group, the penalty for felony is loss of freedom ranging to three years.

(2) The penalty for felony is loss of freedom ranging to five years, in time

of war ranging from two years to eight years if the refusal

a) takes place in the presence of other subordinates either by express refusal to carry out the order or by some other insulting manner,

b) involves the danger of significant disadvantage to the service or to discipline.

(3) The person who in war does not carry out a war order is to be punished by loss of freedom ranging from ten years to fifteen years or for life, or by death.

(4) The person who commits the offense out of carelessness, is to be punished for misdemeanor by loss of freedom ranging to one year in case of section (2) point b), in time of war ranging to three years, in case of section (3) ranging to five years.

Violence Against a Superior or Against Service Personnel

Paragraph 355. (1) The person who uses violence, threatens with it or exhibits violent resistance

a) against a superior,

b) against his immediate superior, the guard or other service personnel during the fulfillment of his service duties or because of this commits a felony and is to be punished by loss of freedom ranging to three years, in case of war ranging from one year to five years.

(2) The penalty is loss of freedom ranging to five years, in time of war ranging from two years to eight years, if

- a) the offense is committed using firearms or in a group,
 - b) the offense at the same time is also a refusal to carry out an order,
 - c) the offense involves severe bodily harm, or the danger of significant disadvantage to the service or to discipline.
- (3) The penalty is loss of freedom ranging from two years to eight years, in time of war ranging from five years to ten years if the offense causes lasting deficiency or severe deterioration of health.
- (4) The penalty is loss of freedom ranging from five years to fifteen years if the offense causes the injured party's death.
- (5) The penalty is loss of freedom ranging from ten years to fifteen years or for life, or death, if
- a) the offense also accomplishes intentional taking of a human life,
 - b) the offense is committed in war situation.
- (6) The regulations of this Paragraph must be applied also when the offense is committed against a person who came or was ordered to the defense of the person defined in section (1).

Violation of Respect for Authority

Paragraph 356. (1) The person who violates the respect for

- a) the superior,
 - b) the immediate superior, guard or other service personnel performing their duties
- in the presence of another or in an exceptionally rude manner, commits a

misdeameanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years if the offense is committed in the prescence of several soldiers or otherwise before the general public.

Instigation

Paragraph 357. (1) The person who stirs up dissatisfaction among the soldiers towards the superior, the order or in general against the order or discipline of service, commits a misdeameanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years, if

a) the instigation is committed during the performance of duty,

b) significant disadvantage derives from the instigation for the service or discipline.

Title III.

Crimes by a Superior

Insulting a Subordinate

Paragraph 358. (1) The person who insults his subordinate in his human dignity, in the prescence of another or in an exceptionally rude manner, commits a misdeameanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to three years, if the

offense is committed

- a) for base motivations,
- b) causing severe bodily or mental suffering,
- c) to the injury of several subordinates.

(3) The penalty is loss of freedom ranging from one year to five years if the offense causes severe bodily injury or significant disadvantage to the service.

Abuse of Supervisory Authority

Paragraph 359. The person who, by abusing his supervisory authority,

- a) subjects his subordinate to disciplinary action,
- b) limits his subordinate in exercising his right to complain,
- c) shortchanges his subordinate in his allowance or places material burden on him,
- d) uses [imposes upon] his subordinate for personal purposes,
- e) treats his subordinate in a manner more advantageous or more disadvantageous than the others,

commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

Failure to Exercise Supervisory Care

Paragraph 360. (1) The person who violates his supervisory obligation by failing to take the necessary steps to provide material supplies for his

subordinate or to protect him or rescue him from threatening danger, unless a more severe offense takes place, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) The penalty for felony is loss of freedom ranging to five years, in time of war ranging from two years to eight years if the offense involves significant disadvantage to the service or discipline.

(3) The person who commits the offense defined in section (2) out of carelessness, is to be punished for misdemeanor — according to the differentiations made there — by loss of freedom ranging to one year, or to three years respectively.

Failure to Take Supervisory Measures

Paragraph 361. (1) The person who, by violating his supervisory obligations, fails to take the necessary measure to

a) prevent violations of obligations or offenses by a subordinate, or hold him responsible for it,

b) overcome a disturbance threatening the service order, discipline or public safety,

commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) If the offense involves significant disadvantage to the service, discipline or public safety, the penalty for felony is loss of freedom ranging to five years, in time of war ranging from two years to eight years.

(3) The person who commits the offense defined in section (2) out of carelessness, is to be punished for misdemeanor — according to the differentiation made there — by loss of freedom ranging to one year, or to three years respectively.

Failure to Supervise

Paragraph 362. (1) The person who violates his supervisory obligation by failing to supervise his subordinate in the performance of his duty, and if this involves significant disadvantage to the service or discipline, commits a misdemeanor and is to be punished by loss of freedom ranging to one year.

(2) If the offense involves particularly large disadvantage to the service or to discipline, the penalty for felony is loss of freedom ranging to five years, in time of war ranging from two years to eight years.

(3) The person who commits the offense defined in section (2) out of carelessness is to be punished for misdemeanor — according to the differentiation made there — by loss of freedom ranging to one year, or to three years respectively.

Title IV.

Crimes Endangering the Fighting Ability

Endangerment of Combat Readiness

Paragraph 363. (1) The person who directly endangers the combat readiness of

the unit by violating his service obligation in

a) not taking care to ensure the necessary armament, battle equipment or other war materials or to protect the supplies,

b) annihilating, rendering useless or otherwise diverting from its purpose important armament, battle equipment or other important war materials, commits a felony and is to be punished by loss of freedom ranging from one year to five years, in time of war ranging from two years to eight years.

(2) If the offense involves particularly large disadvantage to the service, the penalty is loss of freedom ranging from two years to eight years, in time of war ranging from ten years to fifteen years or for life, or death.

(3) The person who commits the offense out of carelessness is to be punished for misdemeanor in the case of section (1) — according to the differentiation made there — by loss of freedom ranging to one year, or to three years respectively; in case of section (2) — according to the differentiation made there — by loss of freedom ranging to three years, or to five years respectively.

Violation of Commanding Officer's Responsibility

Paragraph 364. The person who in war situation, by violating his responsibility as commander

a) surrenders subordinate soldiers to the enemy or allows them to be captured,

b) annihilates an important battle position, equipment, means of battle or other war materials entrusted to his care without compelling need, or allows

the enemy to capture these in usable condition,

c) does not put forth the resistance against the enemy that he is capable of, commits a felony and is to be punished by loss of freedom ranging from ten years to fifteen years, or for life, or by death.

Evasion of Fulfilling the Combat Responsibility

Paragraph 365. The person who, in war, extricates himself from performing his combat responsibility by

- a) arbitrary abandonment of his service post, hiding or flight,
 - b) intentional creation of inability to fight or displaying deceptive behavior,
 - c) abandoning or damaging his war implements or failing to use them,
 - d) voluntarily surrendering to the enemy,
 - e) other severe violation of his service obligation,
- commits a felony and is to be punished by loss of freedom ranging from ten years to fifteen years, or for life, or by death.

Sabotaging the Combat Spirit

Paragraph 366. (1) The person who, in time of war stirs up dissatisfaction, generates halfheartedness or spreads alarming rumors among the soldiers, commits a felony and is to be punished by loss of freedom ranging from one year to five years.

(2) The penalty is loss of freedom ranging from five years to fifteen years

if the offense

- a) causes dissatisfaction or other violation of duty among the soldiers in war situation,
- b) involves other significant disadvantage to the service.

Interpretive Regulation

Paragraph 367. As applied in this Chapter, military service must be understood to mean service performed by persons designated in Paragraph 122 section (1).

[signed] Pal Losonczi, president of the Hungarian People's Republic's
Presidential Council

[signed] Imre Katona, secretary of the Hungarian People's Republic's
Presidential Council

Justification to the Penal Code's Draft Proposal

General Justification

The Penal Code is the fundamental legal instrument for struggle against crime. It defines the offenses and the penalties and measures which can be applied against those committing them.

I.

1. There has been a penal code in Hungary for one hundred years.

The first Hungarian penal code adopted by law No V. of the year 1878 wore upon itself every character of the lawmaking of liberal capitalism and of the penal law concept of the times. Naturally, its main goal was to protect the capitalist state, social and economic order. It proceeded with particular severity against every attack on private property. Its regulations governing political offenses were directed against the then developing worker's movement.

At the same time the law placed great weight on precisely working out the legal concepts, concise definition of states of affairs, on developing the various sections of the penal system, and through this it undoubtedly represented progress compared to the earlier legal practice based on laws of habit and the arbitrariness of judges. Yet the reform of this penal code soon became necessary because already at the time it was created it represented a declining trend in penal law. But comprehensive reform did not take place. The ruling circles gained effect for the most important penal policy demands by means of a large number of modifying and supplementary laws.

2. During the 133 days of the Council Republic there was no way to create a new penal code. The penal regulations born at that time served the protection of the proletarian dictatorship. These were the first socialist penal statutes in our country's history.

3. The politics of the counterrevolutionary era following the fall of the Council Republic were also reflected in the passing of penal laws. Strict

laws were made to protect the counterrevolutionary system, to oppress the workers' movement and other progressive forces, and the tools of penal law were also used to support the ground gaining of Hitler's and of the domestic fascism, to accomplish its goals, and thus also for racial persecution.

4. Following our country's liberation important tasks were waiting for the creation of penal laws. Effective statutes were needed to hold responsible the war- and antipopular criminals, to protect the democratic national order, in the interest of breaking the back of speculation and insuring public supply.

After creating the proletarian dictatorship and the Constitution, creation of new, socialist foundations for the penal law became necessary. But the conditions did not yet exist for creating a penal code encompassing the regulation of the entire penal law, thus only the general part of the penal code was born with law No II. of the year 1950 (Bta) [for Penal Code, General]. This replaced the general part of the code from before the liberation.

The Bta expressed the social, economic and political changes which took place in our country. It defined the task of penal laws in insuring protection against actions dangerous to society. It overhauled the system of responsibilities and thoroughly changed the penal system in accordance with the principles of socialist penal law. It introduced uniform loss of freedom and established corrective-educational labor as a new institution.

Other regulations of the old code remained in effect all the way until 1962 with numerous modifications and supplements. In the 1950s a series of statutes expressed the efforts directed at gradually developing the socialist penal law as a whole. The Ministry of Justice systematized the legal material which had become almost imperspicable due to the many modifications and supplementations and published it in an official publication (Official Compilation of the Material Penal Law Regulations in Effect. — BHO).

5. The first comprehensive socialist Hungarian penal law, the Penal Code [Btk] of the Hungarian People's Republic (Btk — law No V. of the year 1961) came into existence in 1961 after several years of preparatory work. The Btk uniformly regulates the entire material of the penal law, including the "penal law of youth" and the "military penal law" also.

The Btk in effect, in accordance with the social, economic and political conditions of the time, taking into consideration the development of law in Hungary, endeavors to help in this successful building of socialism and with foresight to efficiently serve the protection of socialist society. During its preparation the experiences of penal law creations of other socialist countries were also used.

Definition of the law's task also expresses the Btk's socialist character. according to this the law's task is to protect the Hungarian People's Republic's state-, social and economic order, the person and rights of

its citizens, to educate to observe the rules of living together in a socialist society, and to train for discipline as citizens.

6. The Penal Code in its more than a decade and a half of application successfully defended our socialist social order, the person in rights of the citizens, contributed to the solidification of public order and public safety. That planned, comprehensive law creating process which began in the early 1970s for the modernization of penal statutes also played a role in this.

This process began with the Btk's 1971 modification. This established the division of offenses according to weight into felonies and misdemeanors, narrowed this fear of offenses for which the death penalty is applied, according to the socio-economic growth significantly modified the regulation of traffic offenses and of offenses against the national economy and against property. The Btk's next modification — in 1973 — created the conditions for the courts to be able to practice a differentiated meting out of penalties according to the legal policy guide principles and to be able to apply in broader circles the penalties involving property disadvantage (monetary fine penalties, confiscation of property).

The effective and rapid system of holding responsible by penal law, based on the differentiation of dangerousness of offenses to society came into existence with law No I. of the year 1973 dealing with the penal process.

In 1974 the statutes created for restrictive custody and for the work therapy medical treatment of alcoholics in institutions insured efficient protection for society from the particularly dangerous repeat offenders and against alcoholism which also played a very big role in criminal activity.

In 1975 new statutes were published dealing with the post treatment of persons released from loss of freedom. The network of professional and social supervisors patrons was developed on the basis of these, and the convicts received greater assistance than before in properly fitting into society after fulfilling their penalty, and not step again on the road to crime.

These partial supplements and modifications — even though they fulfilled the hopes attached to them — did not endeavor and could not endeavor to accomplish comprehensive reform of the penal law. It became necessary to create a new Penal Code to summarize the development of law thus far and to develop it further.

II.

1. The basis of efforts aimed at modernizing the penal law is that scientific recognition that criminal activity does not automatically decrease even in a society which builds the advanced socialism, but the conditions exist for gradually overcoming it.

The socialist social system can eradicate criminal activity, as a damaging

inheritance from the past, only during a longer historic era. In the current stage of social and economic development, when we have not yet succeeded in overcoming the past's damaging, mainly conscious inheritances, when the socialist conscience is still only in the stage of development, when our society is not yet free of certain contradictions and it also has unsolved problems, and last but not least when the basically favorable accompanying phenomena of development (urbanization, industrialization, population increase, restructuring of society, its mobility, the scientific-technological development) under certain conditions can have a criminogenic effect and have a tendency in the direction of increasing the criminal activity, only the limiting, decreasing of criminal activity can be defined as a realistic task. But cooperation of the entire society, resolute, planned and high quality crime prevention and crime fighting are needed also to accomplish this.

In Hungary the development of criminal activity in the last decade and a half was characterized by declines and rises, but in total it has not changed essentially, in contrast with the majority of the advanced capitalist countries in which large, even sharp increase of criminal activity can be observed. It is a favorable phenomenon that in our country the overwhelming majority of the offenses committed is of low severity, and the dangerous forms such as the organized criminal underworld, narcotics traffic, terrorism and kidnapping practically never occur.

But we still cannot be satisfied with the situation of criminal activity.

That is, in the gaining of upper hand over criminal activity we have not yet succeeded in achieving a decisive turnaround because the criminal activity in summary has not decreased significantly, and from time to time unfavorable phenomena appear also in the composition of criminal activities.

In the interest of achieving a significant turnaround in the development of criminal activity, we must strongly increase the efficiency of crime prevention and crime fighting, society's collaboration and active cooperation in the fight against crime. One of the conditions of this is that the penal statutes should always correspond to society's needs, to the situation of criminal activity and to the way it is expected to develop.

2. The basic goal of creating the new Penal Code is to create a greater harmony between the development of the socio-economic conditions during the last decade and a half and their protection by penal law than there is now. Such a modern code must be created which corresponds to our society's current level of development and to the progress expected in the next decades. In the interest of this the necessary conclusions must be drawn from the changes of social conditions, the condition of society's conscious and morales, from the situation of criminal activity and from the way it is expected to develop.

It is also a closely interrelated goal with the foregoing for creating the new law, that it should provide more effective and better lasting legal tools to the crime fighting and judicial organs than before for the battle against criminal activity.

Besides increasing the efficiency of the tools of penal law, an important goal of codification is to eliminate those shortcomings of the law in effect which have caused confusion, difficulties in the practice of applying the law and making decisions, and also that the penal statutory regulation should become even more easily understandable to the public and simpler.

3. In the interest of accomplishing these goals, preparation of the new Penal Code began in the autumn of 1974.

a) The organizational forms of preparing the new law had several levels. Working groups [taskforces] were formed from excellent practical and theoretical experts to work out some of the partial topics. The results of their work were discussed by the codification committee created for this purpose. Representatives of the crimefighting and judicial organs and of jurisprudence participated in the committee.

Directing and coordination of the work was done by a body composed of the most excellent representatives of penal law theory and heads of the interested organs.

The codification used all those experiences and results which could be obtained from the practice of applying the law, as well as from the domestic and foreign jurisprudences.

Special work was done to uncover and work out scientifically the issues to be regulated, and to collect and analyze the statistical and sociological data.

Besides the penal law and criminalological research results the other branches of social sciences and the natural sciences, primarily the results of the medical science also received consideration. The codification evaluated the experiences gained by creating the new socialist penal codes and the practical applications of these, and critically analyzed and made use of the penal law regulations of the developed socialist countries also.

Careful study and analysis of the practical obligations of law, primarily of the practice of courts was one of the fundamental methods of preparation. From this viewpoint, above all the guidance provided by the Highest Court must be emphasized, which served as foundation for numerous new regulations and solutions.

b) The draft of the new Penal Code was debated in broad circles by the citizens and by experts. The social debate was organized by the Patriotic People's Front.

The draft was thoroughly debated also in professional circles. The judges, prosecutors, policeman, attorneys, and other users of law as well as the scientific forms expressed their opinions during the professional debate.

The observations and proposals voiced during the professional and social debates were also used in preparing the new Penal Code Proposal.

III.

1. The Proposal is built on the accomplishments our socialist penal law's

development achieved thus far. The principles of socialist penal law are realized in all regulations of the Proposal, yet they are expressed primarily in defining the purpose of the law, the concept of offense, the conditions of penal law responsibility, the purpose of punishment, and in the development of the system of punishments and measures.

a) The Proposal — in accordance with its socialist character — recognizes the purpose of criminal law to be in providing protection against acts dangerous to society, and in educating to observe the rules of living together in a socialist society and to respect the law.

In agreement with the law in effect, the Proposal also designates what acts it deems dangerous to society. Such are those activities or omissions which injure or endanger the Hungarian People's Republic's national, social or economic order, and the person or rights of the citizens (§ Paragraph 10. sec. (2))).

b) According to the Btk in effect the offense is an act dangerous to society, committed culpably (intentionally or out of carelessness), for which the law orders a penalty to be meted out. These criteria — dangerousness to society, culpability and declaration on the act being an offense — have become firm structural elements of our socialist penal law, which will have to be saved also for the future (§Paragraph 10. secs. (1) and (2))).

c) Dividing the offenses into felonies and misdemeanors — introduced in 1971 — has worked out well, and the Proposal further develops this.

According to the Proposal all carelessly committed offenses are misdemeanors; this is justified by the qualitatively differing nature of careless actions and intentional behavior and by these being judged differently by society.

Within the intentional offenses the distinction between felonies and misdemeanors continues to be based on the penalty item for the offense, because this expresses the action's dangerousness to society. The Proposal considers those intentional offenses to be felonies for which the law orders penalties more severe than loss of freedom for two years to be meted out (Paragraph 11, sec. (2)). In the Special Part, the Proposal indicates for all offenses whether they are misdemeanors or felonies.

d) International cooperation against criminal activity requires new forms of collaboration among the countries. The socialist countries have already taken steps in this direction. The Proposal's regulations regarding the validity of foreign judgments (Paragraph 6.), taking over and yielding the administration of penalty (Paragraph 7.), and offering to conduct penal proceedings (Paragraph 8) create the framework for these new forms of collaboration.

e) Chapter III. of the Proposal contains those regulations which exclude being held responsible by penal law. In essence these correspond to the regulations in effect, fundamental changes were not needed.

The Proposal continues to tie responsibility before the penal law to the completion of the fourteenth year of life (Paragraph 23.). The person who did not yet complete his fourteenth year of life when the act otherwise punishable was committed cannot be punished due to being of childhood age. The court of guardians may apply protective and preventing measures against those of childhood age. That is, the means suitable for altering the illegal behavior of children under 14 years of age are to be found not in the penal law, but primarily in the system of protecting the children and youth; thus the battle against the "criminal activities" of those of childhood age must be taken up not by lowering the age limit for being subject to be held responsible, but by further developing the system of protecting the children and youth.

In regulating responsibility for behaviors committed in ill mental health conditions [sic], otherwise subject to punishment (Paragraph 24) the Proposal makes use of the newest results of medical science. In the present Btk only the mental illness, imbecility, and confusion of consciousness are considered as reasons of exclusion from the ability to be held accountable. The Proposal supplements this by adding emotional breakdown and confusion of personal identity and expresses that other such not expressly specified ill conditions of mental operation may also occur which render the perpetrator unable to recognize his action's consequences as dangerous to society or that he should act according to this recognition.

The regulations regarding exclusion from punishability under conditions of mental illness continue to be inapplicable to the benefit of the person who commits the offense in a drunk or dazed condition deriving from his own fault (Paragraph 25.).

f) The punishment system of the law in effect has generally withstood the test. Thus the Proposal's regulations concerning penalties and measures (Chapter IV.) are based on the present system, but they are expanded by several elements in the interest of holding a person responsible more in accordance with the personality of the perpetrator and the severity of the offense, in a more personalized and thus more effective manner.

f/1. According to the Proposal — in agreement with the Btk in effect — the main penalties are the death penalty, loss of freedom, corrective-educational labor, and the monetary fine punishment. Secondary penalties are loss of right to participate in public affairs, loss of right to practice an occupation, loss of right to drive motor vehicles, banishment, expulsion, confiscation of property, and supplementary monetary fine punishment.

A new regulation is that some secondary punishments may also be applied independently, without a main punishment being meted out (Paragraph 38. sec. (3)).

The socialist progress of law is moving in the direction of gradually diminishing and — as the ultimate goal — eliminating the death penalty,

but at the present time abolishment of this penalty is not yet timely. The Proposal specifies the death penalty as an alternate penalty for the most severe offenses against the state, humanity, life and public safety, as well as for the most severe military offenses.

Compared to the present regulations the proposal emphasizes better the exceptional nature of the death penalty. This is expressed by the new regulation according to which the death penalty can be meted out only exceptionally and only when -- taking into consideration the outstanding dangerousness of the offense and of the perpetrator to society, and the particularly high degree of culpability -- protection of society can be insured only by applying this penalty (Paragraph 84.).

The exceptional nature of the death penalty is reflected also by that regulation of the Proposal that it can be applied only against a person who at the time the offense was committed had already completed his twentieth year of life (Paragraph 39. sec. (1)). -- The Btk now in effect makes it possible to mete out the death penalty also in case of an offense committed by a soldier before completion of his twentieth year of life. The Proposal modifies this regulation in such a way that the death penalty can be applied only against a soldier who has completed his eighteenth year of life, providing that the offense severely injures the military interests (Paragraph 116.).

Loss of freedom continues to occupy an important place in the penalty system. The loss of freedom lasts for life or for a definite length of time (Paragraph 40. sec. (1)).

The lower limit of loss of freedom lasting for a definite length of time is raised by the Proposal from the present thirty days to three months. That is, loss of freedom for thirty days is too short a time for the positive effects of punishment to take effect; such a short time is not suitable to achieve the appropriate educational effect, but due to its weight it is not suitable as a deterrent either. At the same time such disadvantages of the loss of freedom as being locked together with criminals, loss of employment, etc. materialize even with loss of freedom of such short duration. The broader system of penalties and measures of the Proposal than thus far will make it possible for such a short duration of loss of freedom to be substituted by other legal disadvantages.

The general upper limit for loss of freedom continues to be specified by the Proposal in fifteen years, and in twenty years when the court metes out one penalty in one procedure for several offenses (agglomerate punishment). The upper limit for loss of freedom is twenty years also in the case when the court combines several penalties at a later date into one penalty (overall penalty).

Differentiation of the administration of loss of freedom, execution of the penalty in several degrees [of severity] has worked out well in practice.

But the four degrees defined in the Btk now in effect (penitentiary, severe prison, prison, jail) proved to be too many. It is difficult to properly differentiate the rights and obligations of the convicts as well as the internal order of the institution for carrying out the penalty according to four degrees in such a manner that their contents be easily recognizable and show discernible differences.

In the interest of better adjusting the degrees of administration of penalty to the actually existing differences in the dangerousness of the convicts to society, in order to be able to make more easily discernable differences in the intensity of education, in the extent of strictness, in the manner in which the convicts are treated, the Proposal decreased the number of degrees to three. Loss of freedom must be carried out in the degrees of penitentiary, prison or jail (Paragraph 41.).

The Proposal specifies the minimum duration of corrective-educational labor in six months instead of the present three months, the maximum duration in two years instead of the present year and a half, and in three years in the cases of agglomerate and overall punishment (Paragraph 49.).

The courts are applying the monetary fine punishment in a significant and increasing degree. On the basis of favorable experiences abroad, the Proposal introduces the new, so-called "daily item" system of meting out monetary fine penalties (Paragraph 51.). The essence of this is: first the

court evaluates the severity of the act and the culpability of the perpetrator. Based on this it determines the number of daily items of the monetary fine penalty. Following this it examines the perpetrator's earnings (income), on the basis of which it determines the sum corresponding to one daily item.

This system will be suitable to eliminate that unfavorable phenomenon that the courts in individual cases mete out the same size of monetary fine Punishments for actions of the same severity — for perpetrators with different incomes. The system of meting out monetary fine punishments as introduced by the Proposal will lead to individualized and therefore more effective meting out of punishments, and is more suitable for society's sense of fairness.

The Proposal contains two significant modifications in the regulations concerning supplementary punishments (Paragraphs 53 through 65.). In the interest of expanding the sphere of penalties and making holding responsible someone by penal law better differentiated, in the case of an offense to be punished by loss of freedom not exceeding two years there is a possibility for the court to mete out only a supplementary penalty instead of a main penalty (Paragraphs 38. and 38.). This means that for example for traffic offenses the court may apply a prohibition of driving motor vehicles, by itself. That is, in the given case the supplementary penalties in themselves can also be suitable to cause such a severe disadvantage which is necessary to achieve the purpose of the penalty.

In the cases of prohibition to practice an occupation and prohibition to drive motor vehicles, the Proposal also affords the possibility of permanent prohibition (Paragraphs 58. and 60.). Public opinion has been demanding this for a long time (and justly so, because it is really justified to permanently prohibit those to practice an occupation or to drive motor vehicles who are unsuitable to do so).

§/2. The Rtk now in effect recognizes the following measures: warning (in case of offenses of low severity), compulsory withdrawal treatment (for alcoholics), compulsory medical treatment (in case of mental illness) and confiscation. The Proposal expands the system of measures. It also regulates the granting of probationary time, restrictive confinement and supervised probation (Paragraph 70.) as measures to be applied as needed.

At the present time the granting of probationary time (Paragraphs 72. and 73.) is a measure applicable only to youthful offenders. The Proposal introduces this measure also for persons of adult age, if the offense committed is to be punished not more severely than by loss of freedom for two years. It will be applicable in the case of an offender who is not a repeater and for whom there is no need to mete out a penalty, but in whose case it is desirable in the interest of further shaping his behavior and in the interest of following the person with attention that the possibility of meting out a penalty remain in existence for a specific length of time (one to three years).

The restrictive confinement introduced by Law No 9 of the year 1974 makes it possible to deprive particularly dangerous repeat offenders of their freedom after the administration of loss of freedom for an additional period of time ranging from two years to five years. The practice is already applying this new institution of the battle against repeat offenders. The Proposal maintains the institution, but determines the conditions of applying it differently from the present. The purpose of this is that restrictive confinement should be applied only against those offenders who commit offenses of really significant dangerousness to society, and should not be applicable against those who commit offenses of lesser severity, even though repeatedly (Paragraphs 78. through 81.).

The Proposal regulates the most general rules of supervised probation among measures (Paragraph 82.). This is a unique measure in as much as it is not independent but is tied to other penalties or measures. Currently supervised probation exists only for youthful offenders and within the sphere of post treatment of those released after loss of freedom (law No 20. of the year 1975). The Proposal significantly expands this.

For the compulsory treatment of alcoholics (Paragraphs 75. and 76.) the Proposal contains unique new measures, substituting for penalties. Instead of a penalty of loss of freedom not exceeding six months or lighter than this the person who committed his offense in connection with his alcoholic way of life can be required as an independent measure to undergo treatment

in a work therapy institution when those circumstances also exist in the case of which compulsory treatment in an institution can be ordered according to law No 10 of the year 1974. The maximum length of institutional treatment will be two years.

g) Among the new rules concerning the meting out of penalty (Chapter V.) we must give special consideration to two areas of topics.

The Btk now in effect does not regulate the possibility of mitigating the penalty, that is, meting out a punishment more lenient than the lower limit of punishment range defined in the law, as an exceptional institution.

The situation of criminal activity in this country is characterized by offenses of lower severity occurring en masse. Because the lower limits of the penalty ranges established by law were high, the courts were able to mete out penalties corresponding to legal policy principles of applying the law only by using the possibility of mitigating the penalties in a significant portion of the cases. But this is not desirable because it hinders the development of a correct and healthy practice of meting out penalties from the viewpoint of penal policy, and leads to the deterioration of respect for the penalty items in the law.

The Proposal ends this contradiction; it emphasizes the exceptional character of the mitigation of penalty (Paragraph 87.), and in the Special Part it defines realistic penalties which also reflect the experiences gained in crime fighting. This is the goal of decreasing the penalty items for certain offenses, mainly

their lower limits, as well as increasing the sphere of offenses penalized by corrective-educational labor and monetary fine punishment also, besides loss of freedom.

Creating effective protection against the repeat offenders is an important task of the new Penal Code. In general, the Btk now in effect determines the penalty for repetition (which is a so-called qualifying circumstance involving more severe penalty than that for the individual offenses) in a sentence of loss of freedom ranging to five years for the same kind of offense. At the same time even the individual regulations of the law now in effect attach consequences of a much broader range than this to repeated commission of an offense (for example in the degrees of administering loss of freedom, and in determining the list of convictions excluded from conditional granting of freedom).

And the legal policy guide principles of the application of law prescribe that those who have already been sentenced earlier for the same or similar offenses must be punished severely.

The Proposal forms various groups of offenders repeatedly held responsible by the penal process (Paragraph 137. points 12, 13 and 14), and determines legal consequences of varying severity for the individual repeater categories in accordance to their degrees of dangerousness to society (Paragraphs 42 and 43, 47, 72, 78, 90, 97 and 98, 102 and 103).

The Btk now in effect considers repetition of only some offenses to be a

circumstance leading to increasing the severity of the legal penalty item. According to the Proposal if the perpetrator within a specified length of time has already been punished for an offense of the same or similar character, it leads to the meting out of a more severe penalty for all intentional offenses.

h) Release from the disadvantageous legal consequences connected to the prior record of punishments (rehabilitation) is a humane institution of our penal law. Its essence is that under certain conditions, or with the passing of a certain length of time the convicted person is to be considered as having no penal record. As a result of this, he may without limitation practice those rights to which only persons with no penal record are entitled (for example he may get a job which can be filled only people with no penal record).

The present regulation of rehabilitation [used as above] is quite complicated and contradictory. Besides this, it affords unjustified concessions to those who repeatedly commit offenses, even though by committing additional offenses they have already refuted that assumption serving as foundation for the rehabilitative release that they have found their ways back into society and in the future will avoid the commission of additional offenses.

The Proposal ends the contradictions developed on the basis of the Ptk. The rehabilitation extends only over the legal consequences tied to the penal sentence, and over administrative law, labor law, etc. consequences. In this area the rehabilitated person is to be considered as having no penal record,

and does not have to account for sentences regarding which he has been rehabilitated. But the rehabilitation does not cover those disadvantageous legal consequences which the penal law ties to being sentenced in the case of being held responsible for an additional offense (Paragraph 100.). By this, the Proposal significantly simplifies the regulation, and also makes the work of authorities easier which proceed in penal matters.

1) The regulations now in effect concerning youthful offenders, those who are 14 to 18 years of age when the offense is committed have basically worked out well, the Proposal contains only minor modifications (Chapter VII.).

Many problems have occurred since the Btk took effect in connection with the treatment-and-rearing of mentally deficient or retarded youth. In the interest of eliminating these problems the Proposal ends educational treatment as an independent measure. In the future, treatment-and-rearing will be a method of administering rearing in correctional institutions (Paragraph 118), assuming that it is necessary to take the young person out of his prior environment. If this is not necessary, measures which insure the medical-pedagogical rearing of a young person of deficient mental capacity can be ordered within the framework of protective supervision.

1) Chapter VIII. of the Proposal contains separate regulations concerning soldiers. The general regulations of military penal law correspond with minor modifications to the regulations of the Btk currently in effect.

2. The Special Part of the Penal Code contains those behaviors which the

law orders to be punished.

a) For the most part the Stk now in effect correctly determines those actions dangerous to society which must be declared to be offenses. But the development of society, changes in the economic, moral, conscious circumstances affect primarily the circle of behaviors which should be punished, and the degree of dangerousness these actions represent to society, thus the Proposal in this respect contains several modifications.

In the interest of preventing some acts highly dangerous to society, and to hold the perpetrators of these appropriately responsible, the Proposal establishes new offenses:

Among the offenses against public security the Proposal contains terrorist activities (Paragraph 260.). The reason for declaring it as an independent offense is that in recent years such acts have become more frequent worldwide when the perpetrators gained control over one or several persons or significant material goods, then make extortionist demands on state organs. And for the eventuality their demands are not fulfilled, they threaten to kill persons held by them or to annihilate the material goods.

Modern protection of the human environment, protection of its natural values must be insured also through the use of the means of penal law. The rules of the Proposal concerning damaging of the environment (Paragraph 279.) and damaging of nature (Paragraph 280.) serve this.

Theft, damaging of museum treasures or illegally removing them from the country is one of the characteristic new elements of international criminal activity. This causes very large damages because the monetary values of these objects and collections, the loss to the nations inventory of treasures in many cases cannot even be expressed in terms of money. The Proposal therefore promises more severe penalties without regard to value if the violation of foreign currency management (Paragraph 309.), theft (Paragraph 316.), damaging (Paragraph 324.) and receiving of stolen property (Paragraph 326.) is committed involving museum objects.

In the interest of insuring the healthy development and health of young people, as well as of preventing the spread of the consumption of narcotics experienced worldwide the Proposal increases the penal law's threats for actions related to narcotics and drugs (Paragraph 282.) and in the facts relating to inducement for narcotic habit (Paragraph 293.).

Declaration of the abuse of radioactive materials as offense (Paragraph 264.) is justified by the ever increasing role the radioactive materials fulfill in scientific research, medicine and production.

Prohibited transfer of control over a motor vehicle (Paragraph 189.) is a new situation of facts among the traffic offenses. Currently the law punishes only the transfer of driving to a person who is drunk. However, holding someone responsible before the penal law is justified also in those cases when driving is transferred to a person unsuitable for some other reason

(for example to a child). This behavior at the present time is only a breaking of rules.

b) The sequence of the Chapters of the Proposal's Special Part deviates from the solution of the Btk now in effect. That is, the sequence expresses the order of values. From this viewpoint the present placement of offenses against the person -- in Chapter VI. of the nine chapters of the Special Part -- is inappropriate. The Proposal wishes to express the outstanding penal law protection of the citizen's life, bodily integrity, freedom, and dignity also by placing the offenses against the person immediately after the offenses against the state and humanity. Also, with respect to the interrelation of protected social conditions the Proposal moves the traffic offenses which have become an independent chapter, as well as the offenses against marriage, family, youth, and sexual morals closer to the beginning.

c) In the Special Part of the Proposal the most important changes also include the following:

1. Occurrence of offenses against the state and against humanity is very rare.

The number of persons held responsible for organized counterrevolutionary activity is not significant either, yet considering the dangerousness of these actions increased attention must be paid to the effectiveness of penal law tools serving to overcome them. According to the 1971 modification of the Btk, in general the actions of counterrevolutionary character accomplish

the offenses of conspiracy or organizing. But in practice these two offenses are difficult to distinguish from each other. Therefore the Proposal omits the fact situation of organizing and governs the punishment of counterrevolutionary power groups aiming to overthrow or weaken the national, social or economic order of the Hungarian People's Republic under the name of conspiracy (Paragraph 139.). It promises more severe penalties if the conspiracy represents severe endangerment.

Definition of the situation of facts constituting breach of faith (Paragraph 145.) is aimed at increasing the efficiency of crime fighting. This makes it possible to use the tools of penal law against those who in representing our country, by misusing their service to the state or official authority establish or maintain contact with a foreign government or organization, and by doing this endanger the independence, territorial integrity, political, economic, national defense or other similarly important interest of the Hungarian People's Republic. Creation of this regulation is necessary because treason (which also included the above act) regulated also by the present law is an intentional act, but in practice it is difficult to prove what the perpetrator's goal was in contacting the foreign government or organization.

Agitation is among the offenses of the state. According to the present regulations not agitation but breach of community must be found if the weight of the action is of lesser severity, considering all circumstances

of the case. But breach of community is an offense against public order, not against the state. The Proposal also maintains this duality (Paragraphs 148. and 269.). But differently from the regulation in effect, it considers only the actions of hostile content (purpose) to be agitation. By this it narrows the range of those who can be held responsible for agitation and expands that for breach of community.

2. Effective protection of human life is one of the fundamental requirements of our penal policy.

The intentional taking of human life is the most serious offense against life. Today the practice of applying the law considers numerous such actions also to be attempts to take life which actually were not aimed at killing. The final reason for this is that there is no transistion between the taking of human life and severe bodily harm, while the difference is too great between the penalty items of the two offenses. In the interest of resolving this contradiction the Proposal orders less severe penalty than for the taking of human life, but more severe than for causing severe bodily harm, for the case when the bodily injury endangers life (Paragraph 170. sec. (5)).

3. Protection of human freedom and dignity is also an important interest, our law makes it possible to apply several types of sanctions against actions injuring these.

At the same time the Proposal's regulation also reflects that endeavor that

if possible the court should not occupy itself with insignificant matters, thus in the areas of breach of private dwelling and defamation of character it narrows the area where one can be held responsible by penal law. Naturally holding the person responsible cannot be omitted for these either, therefore according to the Proposal the judging of milder cases is placed within the sphere of authority of the councils as rulebreaking. For the cases when these actions are qualified as more severe the possibility will continue to exist for being held responsible by penal law.

4. Traffic offenses represent the largest share of all offenses after offenses against property and this tendency is increasing.

The ever increasing significance and the characteristics of transportation justify it that the Proposal lifts the traffic offenses out of the chapter of the present Btk containing offenses against public safety and public order and regulates them in a separate chapter.

Two principles materialize in the regulation of traffic offenses: Behaviors of lesser dangerousness to society which can be judged more appropriately as rulebreakings should be taken out of the sphere of penal law responsibility, at the same time the conditions for holding someone responsible by strict penal law should exist for those traffic rule violations which represent high degrees of dangerousness to traffic safety.

Keeping the foregoing in mind, by the title of causing accident on the public

roads (Paragraph 187.) the Proposal threatens only that person with punishment who causes severe bodily injury or death by carelessly violating the rules of public road traffic.

Thus in contrast with the present law the person who does not harm but endangers life or bodily integrity of others or causes injury to another which heals in a maximum of eight days, must be held responsible not criminally but within the rulebreaking process. By handing down heavy monetary fines, by suspending the driver's license, faster and more effective steps can be taken against these rulebreakings within the rulebreaking process.

The person who drives any kind of a vehicle on a public road in a condition influenced by alcohol commits an offense now. The Proposal limits the responsibility before penal law for driving a vehicle in an intoxicated condition to the driving of motor driven vehicles on public roads (Paragraph 189.). That is, according to practical experience even though large numbers of intoxicated driving of horse wagon and intoxicated bicycling occur, penal proceedings for these are begun only if they are coupled with other rule violations. The dangerousness of these behaviors is generally lower than that of intoxicated driving of a motor vehicle, thus the monetary fine which can be meted out within the rulebreaking process is sufficient, indeed, more effective. But in as much as the intoxicated driver of a non-motor-driven vehicle causes severe bodily injury or death, according to the proposal he continues to be responsible for an offense.

5. Chapter XV. containing the offenses against state administration, administration of justice and the purity of public life includes the offense against the order of elections, offense against the police, violation of state secret and service secret, offenses against the office, the official person, against the administration of justice, as well as the offenses against the purity of public life. Present regulation of the so called corrupt offenses is quite complicated, the Proposal strives to simplify this, at the same time increasing also the effectiveness of regulation (Paragraph 250.).

At the present time that person commits the refusal to return home who leaves the country in a permitted manner and does not return to its territory in spite of being called upon to do so, or otherwise makes it known that he will remain abroad permanently. In practice criminal proceedings are started only against the minority of these perpetrators. In accordance with this practice the Proposal omits the fact situation of refusal to return home. Also, it supplements the regulations dealing with prohibited border crossing (Paragraph 217.) with the evasion of rules of traveling abroad and remaining abroad. According to this the person who by evading the rules of travel abroad and stay abroad remains abroad lastingly, and by doing so significantly injures the interests of the Hungarian People's Republic, commits an offense. The illegal remaining abroad represents an increased danger if it is committed by abusing the service or official assignment. The Proposal offers the threat of more severe penalty for this.

6. Chapter XVI. dealing with offenses against the public order includes the offenses against public safety, public tranquility, public confidence and public health.

Rowdiness is the most frequent one of the offenses belonging in this chapter. An expanded interpretation of rowdiness has developed in the practical application of law. Therefore the Proposal defines the fact situation of rowdiness — narrowing it down compared to the one in effect — in such a way that it corresponds to the everyday sense of the word. It considers such provocatively antisocial, violent behavior to be rowdiness which is suitable to generate shock or panic in others (Paragraph 271.).

The Btk in effect orders that person to be penalized under the title of prohibited return who by violating a court decision which specifies banishment, enters into a locality or part of the country from which the court banished him. According to the Proposal it is not necessary to use the tools of penal law against a person violating the execution of the banishment order, effective steps can be taken against him by the rulebreaking method.

7. Economic offenses make up a very small percentage of all offenses.

The Proposal's regulation starts out from the point that the penal law responsibility which exists for economic offenses is important, but it is the part of the legal responsibility system of economic management which can be used only in the most severe and extreme cases. That is, economic

sanctions and other legal consequences (for example economic fine, civil law reimbursement responsibility) or forms of personal responsibility (rulebreaking, disciplinary responsibility, etc.) can be used efficiently against actions injuring the discipline of economic operation. Thus in the area of economic life the threat of penal law responsibility must be made only against those actions of damaging effect, outstandingly dangerous to society, in the cases of which the economic sanctions or the other forms of responsibility are no longer sufficient.

Translating this theoretical point of view into practice required that we should modernize the regulation of economic offenses and develop penal law regulations corresponding to the needs created by the economic-social progress which would serve prevention and more effective crime fighting alike. This is why we left all those economic offenses out of the proposal which occurred only in the regulations but not at all in practice, or against which more effective steps can be taken by methods outside the penal law. Thus the Proposal does not contain the fact situations of wasteful economic management and irresponsible getting into debt. Besides this several fact situations were modified compared to the current regulations in the area of offenses injuring the obligations in economic operation. The goal of this is that penal law responsibility should attach to only those behaviors the harmful effect of which goes beyond the conditions and sphere of interest of the given economic operating unit and because of its significance damages the interest of the national economy, causes disadvantages to it (Paragraphs 287., 288., 290., 297., 298.)

Within the framework of this chapter the Proposal regulates the offenses harmful to foreign currency management, as well as the custom offenses, with particular care — primarily because of their increasing trend.

At this time the differentiation between an offense harming the management of foreign currency and foreign currency rulebreaking (law No I., Paragraph 116. of the year 1968) is done by precisely determining the limiting value: under the value of 3,000 forints foreign currency rulebreaking takes place.

The Proposal regulates the violation of foreign currency management (Paragraph 309.) in a more differentiated matter than the present law does. It creates the formation of misdemeanor and offers the threat of punishment for it as loss of freedom ranging to one year or corrective-educational labor and monetary fine punishment, electively. The more severe cases — as a business, in criminal association, involving larger value, or committing it involving a museum object — remain felonies, threatened by loss of freedom ranging to three years. The Proposal threatens the more dangerous cases with loss of freedom ranging to five years, and from two years to eight years respectively. Determination of the minor, larger, or significant values, or particularly large value serving as foundation for the limits is a question for the interpretation of law.

At this time customs offense and customs rulebreaking (law No I. Paragraph 114. of the year 1968) are separated by the definite sum: 10,000 forints of the domestic sales value of the merchandise subject to customs duty. It seems

that this should be maintained. Smuggling and the receiving of stolen goods (Paragraph 312.) are two forms of customs offense. The Proposal regulates these in a more differentiated matter than is being done now. According to the present regulation these actions accomplish a felony in all cases and their penalty is loss of freedom ranging to three years. According to the Proposal the milder cases of these two actions are classified as misdemeanors, and their penalty is loss of freedom ranging to one year, corrective-educational labor or monetary fine punishment. The cases increasingly dangerous to society continue to remain felonies (commission as a business, in criminal association, involving significant value of merchandise subject to customs duty, or involving museum objects), their penalty is loss of freedom ranging to three years, in more severe cases to five years.

8. Offenses against property compose the greatest portion of all criminal activity.

Acts of theft, embezzlement, swindle, illegal appropriation, intentional damaging and unfaithful management accomplishing the form of offense and rulebreaking are now separated from each other by the value limit of 500 forints. Practical experience shows that the dangerousness to society of theft, etc. causing a somewhat larger damage than this in general also make it possible to hold the person responsible outside the penal law. The monetary fine which can be meted out for such actions within the rulebreaking process are often a more effective, faster tool. Because of this raising

the value limit for rulebreaking is justified, which is dealt with in a separate statute. But those cases in which due to the method of commission or the personality of the perpetrator are increasingly dangerous even if the value does not exceed the rulebreaking value limit (for example theft committed with the use of false or stolen key, pickpocketing, repeat offenders) continue to remain felonies.

The law now in effect recognizes several such qualifying circumstances — involving more severe punishment — in the area of offenses against property, which on the one hand make regulating more complicated, and on the other hand do not even express the realistic danger to society. Therefore the Proposal significantly simplifies the qualifying system for offenses against property.

The Proposal takes the damage caused by the offense or the value involved in committing the offense for foundation for punishing theft (Paragraph 316.), embezzlement (Paragraph 317.) and swindle (Paragraph 318.), but does not designate even these value limits in terms of sums. This task is to be accomplished by the regulation which places the law into effect, or by the Highest Court.

Keeping in mind the need to simplify, the Proposal narrows down those qualifying circumstances which — besides the value limits — call for more severe qualification of the theft, embezzlement and swindling.

The Proposal does not contain a separate fact situation for usury. A practical and more dangerous case of this is the lending of money as a business, which the Proposal evaluates as a particular form of committing speculation (Paragraph 299.). But the civil law's legal consequence is sufficient for other cases of usury.

In contrast with the law now in effect the Proposal does not consider failure to report an offense against society's property to be an offense. It punishes the failure to make a report only in the cases of offenses against the state and for the breach of state secret and prohibited border crossing which are close to these. The protection of society's property will not suffer by eliminating this offense, because the obligation to register or report actions damaging society's property continue to remain official and job obligations.

9. In general the present regulating of military offenses is adequate, the Proposal contains only minor modifications. Thus it narrows down the penal law responsibility in the areas of military subordination and supervisory offenses.

The Proposal considers the violation of respect for authority in service (Paragraph 356.) to be an offense only if violation of the supervisor's, etc. respect was done in the presence of another or in an outstandingly rude manner. The new fact situation of insulting the subordinate (Paragraph 358.) is also in harmony with this.

The Proposal eliminates the overlap between the legal fact situations of mutiny (Paragraph 352.) and refusal to carry out orders (Paragraph 354.) for the purpose that the cases of minor significance (for example refusal of a meal) should not be classified as mutiny.

Detailed Justification

General Part

1. The General Part contains those regulations which usually refer to all offenses.

The General Part is composed of nine chapters. The regulations dealing with the effect of the law, offenses and the perpetrator, the foundations for penal law responsibility and the obstacles to holding someone responsible, penalties and measures, the meting out of punishment, release from the disadvantages tied to a penal record are included in it. This Part contains the rules of general character affecting youth and soldiers, as well as also the definition of some of those concepts which are significant from the viewpoint of several chapters of the Special Part.

2. Prior to the first paragraph the Proposal defines the purpose of penal law, as a regulation of theoretical significance which expresses the purpose of the entire law and provides guidance during its interpretation and application.

The Purpose of Penal Law

To Paragraph 1.

1. Paragraph 1. of the Proposal designates the purpose of the Penal Code. This is a dual purpose: protective and educational in nature. These two goals are not separated from each other, but designate two sides of creating the penal law and applying it.
 2. Paragraph 1. emphasizes that the Proposal provides protection against actions dangerous to society by using the tools of penal law. Paragraph 10. section (2) of the Proposal contains the definition of actions dangerous to society and a brief summary of the social values protected by penal law.
 3. In the Hungary building an advanced socialist society there are no longer antagonistic social classes with different interests. Thus there aren't any such moral value systems either — with basis in the masses — which oppose each other in the essential questions of living together in a society. Such a generally known and recognized system of the rules for living together in a socialist society have developed in our country which everyone can be expected to respect. Because of this, in the interest of the entire population, our penal law punishes the violation of the fundamental rules of living together in the socialist society.
- When the law insures protection of the most important rules of living together in the socialist society by means of the penal law, at the same time it

prescribes for the citizens, which are those antisocial behaviors society unconditionally expects them to avoid; by doing so it also fulfills an educational, preventive task.

The law expressing the national will must be obeyed unconditionally. The social expectability of this is based on the fact that the socialist state is the state of the entire working population. This respect which our laws now enjoy on the basis that they express the interests of the working people, must represent the anxiously guarded, precious foundation of our socialist legality. The penal law also teaches us this.

4. The penal law serves its goal by defining which actions dangerous to society constitute offenses, and also determines: what penalties and measures are applicable against the perpetrators of these.

5. The Proposal desires to solidify that practice of creating law that exclusively the Penal Code should undertake to regulate the offenses. This insures that the regulations concerning the offenses should not be scattered in several laws. The rule concerning the goal of the penal law should also include that important requirement of legality that only the law — or legal decree — may declare some behavior to be an offense (Law No 24. of the year 1974, Paragraph 4. section (1)).

It also follows from Paragraph 1. that no other penalties or measures than the ones contained in this law may be applied against the perpetrators of the offense.

Chapter I.

The Penal Law's Effect

Chapter I. regulates the penal law's effect, that is, who and where is under the effect of the proposal. The three directions of the legal regulation's effect -- effect in terms of time, area, and the person -- are in close relationship with each other. The territorial and personal effects define the relationships between the domestic and the foreign penal laws.

Time Effect

To Paragraph 2.

1. The penal law contains rules of behavior; in general it is expedient to apply its regulations only to those actions which are committed during the time it is in effect. This corresponds to the requirement of legality. Therefore the Proposal contains that general rule regarding the effect of timeliness that the offense must be judged according to the law in effect at the time it was committed.

The regulations of law No 24. of the year 1974, Paragraph 5., concerning the legal regulations going into effect and the publication of these provide guidance regarding the legal regulations' becoming effective.

2. It follows from the general rule of the penal law's effectiveness in terms of time that if a new law goes into effect between the time the offense

is committed and when it is judged, this has no retroactive potential, that is the action must be judged not according to the new, but to the old law. The Proposal makes an exception from this in that case if the action is not an offense according to the new law, or if it is to be judged more leniently. That is, such a change in the penal law means that the new law — evaluating the action's dangerousness to society differently from the previous one — terminates or decreases the protection by penal law, and it is fair to take this into consideration for the advantage of the perpetrator.

Whether or not the new law makes a more lenient evaluation possible, must be determined not only on the basis of the type and severity of the punishment to be applied but by comparing all the regulations concerning the penal law responsibility.

Certain fact situations of the Proposal's Special Part are so-called framework regulations (for example Paragraph 311. sec. (1)). The statutory provisions which fill out the framework regulations are not penal law statutes, therefore in general Paragraph 2. does not refer to changes in these. But exceptionally this change may also be taken into consideration if the penal law protection ceases to exist through this.

Effect of Location and Person

To Paragraph 3.

1. The significance of regulations concerning the penal law's effect as to

location and person has increased in the last decade. One of the reasons for this is that due to the expansion of international economic and cultural links and the constantly spreading tourism the number of those who are within the territory of another country has significantly increased. The other important reason is that those forms of criminal activity which are inherently international in character (for example, smuggling) has increased, or international collaboration and cooperation is desirable against them because this is the only hope to overcome them (for example terrorism, gaining possession of an aircraft).

These characteristics of the development of criminal activity cause the states to expand their links aiding the fight against criminal activity. But the measures serving cooperation must go together with the justified protection of the state's legal authority, deriving also from its sovereignty.

Building up the broad circles of the state's legal authority and enforcing it with safety measures does not contradict the strengthening of international collaboration against criminal activity, does not hinder joint steps to be taken by the states.

2. As the main rule of the penal law's territorial and personal effect and of the legal authority of the Hungarian People's Republic's crime fighting and justice administering organs, the Proposal specifies the circle of those persons and actions in which the Hungarian state desires to practice its

penal authority, then it gives orders regarding under what conditions and in which cases it will give up its legal authority.

3. Determination of the territorial and personal effect has four basic principles:

- the territorial principle, according to which the state's penal authority extends over all offenses committed on its territory, regardless of the citizenship of the perpetrator;
- according to the citizenship principle the state's penal power extends over its own citizens regardless of where the offense was committed;
- the national selfdefense principle which extends the state's penal power over those offenses without regard for the perpetrator's citizenship and the place of its commission for those offenses which harm the state's basic interests;
- according to the principle of unconditional penal power (universality) an offense committed by anyone must be punished regardless of the perpetrator's citizenship and the place of commission.

None of the principles listed may gain effect by itself exclusively, because it would either leave the protection of society unfulfilled or excessively extend the application of penal law and this could lead to international conflicts. Therefore the Proposal combines the introduced principles and accords them the things which are necessary and expeditious.

4. Section (1) expresses the essence of the territorial principle: the

Hungarian law must be applied to all offenses committed on the territory of the Hungarian People's Republic. This same section gives effect to the citizenship principle also: the Hungarian law must be applied in the case of a Hungarian citizen for actions committed not only in Hungary but also abroad, if this is an offense according to the Hungarian law. In the case of a Hungarian citizen the limitation of legal authority is permitted by the Proposal only in exceptional cases: Paragraphs 6 through 8 give detailed orders about this.

Section (2) includes the offenses committed on a Hungarian ship and aircraft — regardless of the location of where the ship or aircraft is at the time — under the same treatment as offenses committed within the country.

Waterway vehicles, floating work machines and floating equipment are included in the concept of ship. Paragraph (4) of law No 6 of the year 1973 concerning shipping provides guidance about which ship is to be considered a Hungarian ship.

In the case of offenses committed on the deck of a Hungarian aircraft the Hungarian People's Republic has accepted responsibility in order to practice the Hungarian legal authority by point 1/b of Article 5 of the international agreement published by law No 17. of the year 1973 concerning the overcoming of illegal acts against the safety of civil aviation, and by point 1/a of Article 4 of the international agreement published by law No. 8 of the year 1972 concerning the overcoming of illegally gaining possession of aircrafts.

To Paragraph 4.

1. Paragraph 4 concerns offenses committed abroad by a non-Hungarian citizen. In the listing of section (1) partly the principle of national self-defense and partly the principle of universality are observed.

Point a) must be applied also when the action is not an offense according to the law of the place where it is committed but is for example a contravention or other illegal action but not an action contrary to the penal law. While point b) reflects the principle of national selfdefense, point c) reflects the principle of universality. The latter prescribes the application of the Hungarian law for such offenses committed abroad by a non-Hungarian citizen the pursuit of which is obligated by international pacts (for example the international pacts concerning the protection of war victims as published by law No 32. of the year 1954, the international pact made on the subject of preventing and punishing genocide as published by law No 16. of the year 1955, the pact concerning suppression of counterfeiting of money, published by law No XI. of the year 1933).

2. It may also possibly have foreign policy significance if proceedings are begun for an offense committed abroad against a non-Hungarian citizen. Therefore section (2) refers the initiation of such penal proceedings into the chief public prosecutor's sphere of authority.

If the chief public prosecutor does not order the initiation of penal proceedings, a reason for exclusion from penalizability exists (Paragraph 22 point 1)).

Diplomatic Immunity and Other Immunities Based on International Law

To Paragraph 5.

Paragraph 5 insures the omission of being held responsible by penal law for persons enjoying diplomatic immunity and other immunities based on international law. These persons are entitled to immunity to the extent provided by the international pact, or in the absence of this by international practice.

Section 31. point 1. of the international pact concerning diplomatic relations, as published by law No 22 of the year 1965, states with general effect that the diplomatic representative is immune from the host country's penal law authority.

Taking a stand in the question of international practice requires broad knowledge and circumspection in a unique area of the law. Therefore in this question the justice minister's statement must be taken as foundation by the person applying the law.

Validity of Foreign Sentence

To Paragraph 6.

1. With the expansion of international contacts the progress of law is moving towards the recognition of the effect of foreign sentences. Domestic validity -- that is, identical with that of a sentence by a Hungarian court -- of a sentence by a foreign penal court may be manifested in taking over the

administration of a penalty, and in the penal law consequences (for example being a repeat offender) tied to sentencing, and in establishing the prior penal record of a person.

Among these, Paragraph 7. gives orders concerning taking over the administration of a penalty. -- Due to the differences between social systems and legal systems it would not be proper for us to consider the sentences of all foreign penal courts to have the same validity as the Hungarian court's sentence. Therefore the Proposal considers the sentence of a foreign court to have the same validity as a sentence of the Hungarian courts if an international pact prescribes this.

Under the conditions regulated in Paragraph 8. the conducting of a penal proceeding may be offered to a foreign authority. If the process is conducted abroad on the basis of the offer, it is justified for us to consider the decision made during it to have the same validity as the decision of a Hungarian court.

2. If -- in the absence of conditions defined in section (1) -- the foreign court's decision does not have the same validity as that of a Hungarian court, penal proceedings are in order against a person belonging under the effect of the Hungarian penal law even in spite of the judging which took place abroad. However, conducting the proceedings is not always necessary, it is not for example if the Hungarian court predictably also would not mete out a more severe penalty. Currently the law on penal proceedings (Be Paragraph 393.)

[Be=Penal Process Law] refers the decision of whether in a given case it is necessary to initiate penal proceedings, into the chief prosecutor's sphere of authority. The Proposal accepts this order. Absence of a decision by the chief prosecutor ordering the initiation of proceedings is a reason for exclusion from penalizability (Paragraph 22. point 1)). Inasmuch as the chief prosecutor orders the initiation of a penal proceeding, it would be unfair if the perpetrator had to suffer two penalties for the same offense. Therefore the penalty administered abroad as well as preliminary custody suffered there must be counted towards the penalty meted out by the Hungarian court. The orders of Paragraph 99. provide guidance in this case for calculating prior custody.

Taking Over and Yielding the Administration of Penalty.

To Paragraph 7.

1. In the case when the sentence of a foreign court is carried out in this country, the Hungarian authorities accept the responsibility to carry out the punishment meted out in the foreign court's sentence.

The Proposal creates the possibility of administering a punishment in this country which was meted out by a foreign court. Since this institution of the penal law involves the limiting of the state's sovereignty, application of this may take only on the basis of an international pact.

In the case of carrying out the sentence of a foreign court, it is also a

basic requirement that this carrying out be done in a form which fits into the penal system of the country which takes it over. It would cause unnecessary difficulties unsolvable in practice if the carrying out were to be done in accordance with the foreign statutes. Therefore the Proposal states that the Hungarian law must be applied for the method of carrying out a punishment meted out abroad.

2. Yielding to another country the administration of a penalty meted out by the Hungarian court's sentence means a giving up of rights by the penal law authority. But expansion of the international links makes also this necessary. The penalty's goal — primarily the individual prevention — does take place in a limited manner in the case of a non-Hungarian citizen, and the fact that a penalty is administered abroad may mean an increased disadvantage. Therefore the Proposal provides the possibility to yield the administration of a penalty meted out by the Hungarian court to another country. This also may take place only on the basis of an international pact.

Offer to Conduct Penal Proceedings

To Paragraph 8.

The offering to conduct penal proceedings is that case of giving up the rights to penal legal authority when the country possessing the legal authority initiates a move that another country should take over the conducting of the proceedings. Offering the proceedings, which is receiving increasingly larger

and larger significance with the expansion of international contacts, in contrast with the general rules of the penal law's territorial and personal effects represents increased validity of the citizenship principle. In the interest of the more efficient realization of the punishment's goal, the offer makes it possible that the perpetrator should be held responsible by his own country's authorities even if he committed an offense abroad and the proceedings otherwise could have taken place abroad. At the same time this also serves a humane goal, because being held responsible abroad generally involves increased disadvantages.

Currently the penal process law gives orders about offering penal proceedings (Be. Paragraphs 391 through 393), but since this is a legal institution related to the penal law's effect, the Proposal defines the preconditions for making the offer.

The offering of penal proceedings may take place in two cases. If Hungarian legal authority exists for penal proceedings against a non-Hungarian citizen but the perpetrator returned to his home country, extradition is not in order; thus the Hungarian authorities cannot take measures besides offering the proceedings. It may also be expeditious to yield the conducting of penal proceedings to the domestic authorities of a non-Hungarian citizen perpetrator if he is still in Hungary when the proceedings begin. The offering of penal proceedings may take place in any stage of the proceedings, until its legally binding final conclusion. In all cases it is a condition for making the offer

that conducting the proceedings by the perpetrator's domestic authorities be practical.

The offering of penal proceedings can be done not only on the basis of international pact or reciprocity. Practical viewpoints justify that the law should not contain such restrictions. Naturally this does not exclude the international pacts from also giving orders about the offering of penal proceedings.

2. From the content and purpose of offering the penal proceedings follows that in general this cannot take place in the case of a Hungarian citizen. But the complete exclusion of Hungarian citizens would frustrate this practical measure in such cases when the Hungarian citizen lives abroad and those viewpoints which justify the yielding of legal authority exist in the same manner as they do in the case of a non-Hungarian citizen. Therefore Paragraph (2) makes it possible to offer the penal proceedings against a Hungarian citizen if the perpetrator at the same time is a citizen of another country also (so-called dual citizenship) or if he settled abroad.

3. Inasmuch as the Hungarian court has already judged the action with legal finality, the offering of not the proceedings but of the yielding of the penalty's administration may be in order (Paragraph 4. sec. (2)). Thus in such a case section (3) excludes the possibility of making the offer.

Extradition and the Rights of Asylum

To Paragraph 9.

1. Extradition is such a legal assistance in penal law among the countries during which one country hands over a person who is on its territory to another country for the purpose of conducting a penal process or of carrying out a penalty.

It is a basic principle of extradition, generally valid in the international penal law, that the state does not give out its own citizen to another state. Section (1) states this. The Proposal's order does not affect the validity of international legal obligations contained in Item 6. of the peace pact as published by law No XVIII. of the year 1947.

2. According to section (2) the extradition of a non-Hungarian citizen is in order on the basis of an international pact, and in the absence of this, in the case of reciprocity. Reciprocity may be permanent or insured from case to case. Since its existence has no statutory form, the justice minister's statement must be considered for guidance in this question.

3. The condition for extradition is that the given action be considered an offense by the penal laws of the country requesting as well as of the one requested in the extradition and that the person requested to be extradited be able to be held responsible by the penal laws of both countries. The international pacts dealing with extradition adequately regulate this question. But

this principle must also be valid also in the case of reciprocity. Section (3) gives orders regarding this.

4. Paragraph 67. of the Constitution insures amnesty to those who are persecuted for their democratic behavior, for their activities exerted in the interest of social progress, the liberation of peoples, protection of peace. The exclusion of giving out [extraditing] a person who has received amnesty is in harmony with the meaning of amnesty.

Chapter II.

The Offense and the Perpetrator

The penal law — as Paragraph 1. states it — serves its established goal by defining the offenses, as well as the legal disadvantages applicable against the perpetrators. The two central concepts of penal law — the offense and the perpetrator [offender; "committer"] are closely interrelated. Offense without a perpetrator is a conceptually excluded thing — as is the reverse. Therefore in this Chapter the Proposal regulates the most general orders concerning the offense and the perpetrator.

Chapter III. is divided into three Titles. The offense appears in its own full, completed shape in Title I.; this Title gives orders about the forms of being guilty as well as about the agglomerate offense, that is, about the case when the perpetrator is held responsible in one proceeding for the commission of more offenses. The offense's irregular forms of appearance, when the

perpetrator's activity remains in the experimental or preparatory stage, receive space in Title II. Title III. deals with the perpetrators of the offense.

Title I.

Title I. contains the basic orders concerning offenses. It defines the concept of offense, orders the division of offenses into felonies and misdemeanors. Demarcation of offense-unit and agglomerate offense is an important question of the legal qualification of offenses, therefore the concept of agglomerate offense as well as the regulation of when does a continuously committed offense take place received space in this Title. — Intentionality and carelessness are two basic forms of being guilty. The Proposal defines the concepts of these here, and also gives orders about when the more severe consequences tied to the result of an offense may be applied.

The Offense

To Paragraph 10.

1. An act of offense can be accomplished only a human act — activity or omission. Section (1) provides a definition for offense which includes the offense's significant contentual distinguishing marks.

The Proposal emphasizes dangerousness to society as the foundation for the concept of offense. The act's dangerousness to society means that it harms or endangers society's interest.

2. The act's dangerousness to society in itself is not sufficient to define the concept of offense. The Special Part defining the individual offenses is also an organic part of the law. The Proposal declares only those of the wrongly committed acts dangerous to society to be offenses for which the Special Part orders penalties to be meted out. Thus the Special Part is comprehensive in character: besides the ones listed in it, other offenses — by way of analogy — cannot be established.

3. It is a generally accepted principle that the application of the penal law's consequences can take place only in the case of the perpetrator's guiltiness. In the broader sense guiltiness indicates that both the material law and the procedural law conditions of holding one responsible by penal law did materialize. But Paragraph 10. contains this expression in the stricter sense: it means the subjective element of the offense, subjective guiltiness by this, and because of this — without using the word guiltiness — it expresses it in the categories of intentional and careless commission.

Carelessness is the form of guiltiness milder than intentionalness. The pursuit of careless behaviors by penal law is unnecessary, impractical in the majority of cases. Other tools — those of [the] rulebreaking, disciplinary, civil law and state government [processes] — are also sufficient to overcome them. Generally it is justified to hold someone responsible by penal law who intentionally opposes the law's orders. But the person who violated the penal law through his negligence or carelessness must be held responsible only exceptionally, in the cases defined by the law.

4. Section (2) defines the concept of dangerousness to society. The definition's basis is the Hungarian People's Republic's socialist national, social and economic order. Protection of the national, social and economic orders — in its most abstract form — also includes protection of the persons and rights of the citizens on society's scale. But the Proposal particularly emphasizes that it protects these interests not only in general terms but also with regard to the individual citizens. Penal law protection is not limited to only Hungarian citizens. By citizen — in absence of regulation to the contrary — the human, the natural person must be understood, regardless of his citizenship.

The spectrum of subjects enjoying the penal law's protection ranges from the individual citizen to the Hungarian People's Republic including all citizens. Thus the meaning of this order extends also over the state-, social and economic operating organs, organizations. The deed which harms or endangers a specific group of people is just as dangerous to society as is the injury or endangerment of the national, social or economic orders, or of the rights of citizens which compose the community.

5. Dangerousness to society means that the offense injures or endangers some object protected by the penal law.

Protection by penal law must be insured not only against those actions as a consequence of which a result disadvantageous to society has taken place, but also against those which bring about the danger of such disadvantage. Therefore

— in some cases — the Proposal declares also such behaviors to be offenses which do not cause an actual disadvantage but represent or may represent a danger situation. The punishability of attempt, making some preparatory actions subject to penalty, as well as the various endangerment fact situations belong in this area.

6. Dangerousness to society is an increasable element of the concept of offense. Among the behaviors dangerous to society the penal law declares only those to be offenses which must be fought with the tools of penal law.

There may be a difference between an action's abstract dangerousness to society taken into consideration by the lawmaker and the actual dangerousness of real cases to society. The reason for this is partly that when the offense is defined the lawmaker picks out and writes down the behavior's typical characteristics, thus he can express the action's dangerousness to society also only in general terms. On the other hand the measure of dangerousness of certain behaviors to society may also change with the passing of time, it may decrease or increase in accordance with the development of social conditions.

In some cases the difference between an act's abstract and actual dangerousness to society may extend so far that the formal materialization of the fact situation's elements contained in the *Special Part* is not dangerous to society at all.

It can be derived directly from the definition of the concept of offense as given in section (1) that there is no offense even though a behavior formally

accomplishes some fact situation of the law's Special Part but because of the specific circumstances of its commission it is not dangerous to society. To wit, in such a case one of the conceptual elements of offense, the dangerousness to society, is missing.

Offense and Perpetrator

To Paragraph 11.

1. The weights and characters of offenses' dangerousness to society differ. This is the basis for differentiating among offenses, which the Proposal accomplishes also by dividing the offenses into felonies and misdemeanors. This division also corresponds to the public's concept, which sees significant differences between offenses of differing weights.

The basis of demarcation between felony and misdemeanor is partly the form of guiltiness, and partly — for intentional behaviors — the law's penalty item reflecting the offenses' dangerousness to society.

2. On the basis of section (2) all offenses committed out of carelessness are misdemeanors, regardless of the extent of the law's penalty item. This is justified by the fundamental difference appearing in the character of intentionally and carelessly committed offenses, and in their judgement by society.

In the case of intentionally committed offenses the Proposal designates the loss of freedom for two years as borderline. According to this, offenses

threatened by a maximum of two years' loss of freedom and committed intentionally are misdemeanors, offenses threatened by more severe penalty than this are classified as felonies. For the purpose of obtaining information more easily, each individual fact situation of the Special Part specifies whether the given offense is a felony or a misdemeanor.

3. The difference in weights between felony and misdemeanor must be taken into consideration also when regulating some of the law's institutions. In accord with this the Proposal sets different rules for misdemeanors in the areas of the manner administering the loss of freedom, suspending the administration of a penalty, release from under the disadvantages tied to having a prior penal record, as well as for the reason for terminating penalisability materializing in the military penal law, and for the area of being judged in the disciplinary legal process.

4. In the Proposal's verbal usage, offense is a collective concept which includes felonies and misdemeanors. Thus where the law does not mention felony or misdemeanor but speaks in general about offenses, this must be understood to include felony and also misdemeanor.

Agglomeration

To Paragraph 12.

The perpetrator may accomplish one or more offenses. Proper evaluation of its dangerousness to society, and further, procedural practicality viewpoints

justify that if possible the several offenses of the same perpetrator should be judged within the same proceedings. At such time the offenses pile up, agglomeration of offenses exists. Thus offense agglomeration is a multitude of offenses which comes into existence when the perpetrator accomplishes several offenses and those are judged in one proceeding. This definition includes both cases of offense agglomeration: when the perpetrator's behavior manifesting itself in one single act accomplishes the fact situations of several offenses (formal agglomeration of offenses), or when his several, separable behavior manifestations accomplish this (material agglomeration of offenses).

2. Offense unit means that the perpetrator accomplishes one offense. What qualifies as one offense depends primarily on the definition of the offense's legal fact definition, but other orders of the law may also create unities.

Section (2) defines the legal criteria of continuously committed offense. On the basis of this regulation a continuously committed offense is a legal offense unit.

Establishment of continuity has subjective and objective conditions. Its subjective condition is the unit of the perpetrator's decision. But this does not mean that the uniform decision must develop inherently to cover the commission of all offenses; it means that requirement that each individual act must stem from the same decision.

The objective condition of continuity is that there be several acts and these be related to each other. But "same kind" of offense means that offenses defined by identical legal fact situations of the Special Part may belong in the unity of continuity. But the legal qualifications of the individual acts do not have to be completely identical, for example determination of continuously committed offense is not excluded if one part of thefts accomplishes the fundamental case of the legal fact situation while the other a qualified case of this.

Commission "in short time intervals" expresses connection in terms of time between actions belonging into the same continuous unit. The short time intervals mean relatively close connection in terms of time, thus it is not necessary to complete the acts immediately following each other. Not only days and weeks but possibly even a month or two may pass between the acts. But that longer passing of time due to which the acts separate from each other so sharply that including them into one unity is unacceptable both to legal evaluation and for the public's comprehension, excludes continuity.

A further case of legal unit is businesslikeness interpreted in the General Part (Paragraph 137. point 7.) Individual fact situations of the Special Part also contain orders which include accomplishment of the legal fact situations of several offenses into a unit ((for example the taking of a human life committed against an official person, Paragraph 166. section (2) point e)).

Intentionality and Carelessness

To Paragraph 13.

1. The Proposal distinguishes two forms of guiltiness, intentional and careless. The image of consequence for an act prohibited by the penal law appears in the mind of one acting intentionally. But this does not keep him back from committing the offense; either because his endeavors are precisely that the mentioned consequences should occur, that is, he wants them, or because — even though he does not desire them — he accepts their taking place. The direct and the potential intentions are separated by this from each other.

2. The penal law concept of intent encompasses a broader area than what the public interpretation understands by intent. According to this latter, the act is intentional if its perpetrator wanted to achieve the realization of consequences tied to the act. The penal law calls such act purposeful.

If the Proposal desires to omit the punishing of a commission of potential intent in some fact situation of the Special Part, it solves this by taking purpose as an element of the fact situation. If the offense's legal fact situation does not refer to purpose, commission of the act not only by direct but also by potential intent is also punishable. Evaluation of the differing weights of the two kinds of intents belongs in the area of meting out the penalty.

3. Awareness of dangerousness to society is a component element of intent.

Thus the mere possibility of the knowledge of dangerousness to society is not sufficient to establish intentionality. Even though the Proposal does not speak about this when it defines the criteria of intentional commission, it unambiguously follows from the rules concerning the making of error in dangerousness to society (Paragraph 27. sections (2) and (3)) that one may not speak of intentional guiltiness in case the knowledge of dangerousness to society is absent.

To Paragraph 14.

1. While the image of the act's consequences is a conceptual element of intentionality, this is missing in one of the forms of carelessness. If foresight of the consequences is missing from the perpetrator's knowledge because he is guilty of negligence in this respect, his act is an offence committed due to carelessness. The Proposal designates this negligence in the perpetrator's failure to have the attention or circumspection expectable of him. This form of carelessness is negligence (*negligentia*) [Lat.].

In the case of the other form of carelessness, knowledgeable carelessness (*luxuria*) [Lat.] the image of the consequences is not missing. But the perpetrator does not give up his planned act because — even if thoughtlessly so — he hopes that the harmful consequence will not occur.

2. The question of chance (risk) also appears in the sphere of carelessness. According to the Proposal's viewpoint the acceptance of permissible risk excludes the act being illegal, but does not exclude guiltiness. Sometimes

socially useful goals can be achieved with the danger of harm to other legal objects. If the causing of danger in the interest of this goal is permitted and necessary, the risk it involves — assuming that all possible and necessary measures have been taken in the interest of avoiding or minimizing the danger — is not an offense.

To Paragraph 15.

Guilt is an indispensable condition of penal law responsibility. The Proposal gives effect to this principle in regulating responsibility for the act's result as well as for conditions which qualify the offense to be more severe.

According to the Proposal the perpetrator is responsible for such results only if he causes them by at least carelessness, this order excludes objective responsibility based on merely causing it.

This order is applicable only if the result appears as a modifying circumstance. The order must be applied alike to offenses committed intentionally or carelessly. The "at least carelessness" in the Proposal's text means that if even the carelessness is missing with respect to the result, the perpetrator is not responsible for the result, but even intentionality is not excluded with respect to the result.

If the perpetrator out of carelessness causes a result which qualifies the intentional offense more severe, mixed guiltiness comes to existence. In the Proposal's system an offense of mixed guiltiness is intentional offense from the viewpoint of legal consequences.

Fact situations occur in the Proposal's Special Part which materialize only if the perpetrator is guilty of mixed guiltiness (for example bodily harm causing death, Paragraph 170. sec. (5)), while in other fact situations the perpetrator with respect to the result may be guilty of either intentionality or carelessness (for example bodily injury causing lasting deficiency, Paragraph 170. sec. (4)).

Title II.

Materialization of the intentional offense may be broken down into stages: the decision to commit the offense, its preparation, attempt and completed offense. But in practice not all stages of commission occur in all offenses, some may be omitted.

The penal law evaluates the origin of intent only if it is expressed in the form of preparation, attempt or completed offense. The Proposal gives no orders about completed offenses because completeness is the complete realization of the legal fact situation; the legal fact situations of individual offenses are contained in the Special Part. But attempt and preparation call for unique evaluations.

Attempt and Preparation

To Paragraph 16.

1. Paragraph 16. defines the concept of attempt. The offense's "intentional"

adjective emphasizes that only an intentional offense has attempt.

2. Attempt occurs if commission of the offense is begun. This instant separates the attempt from preparation. When the commission of the offense can be considered to have begun, can be established on the basis of analyzing the given legal fact situation. For example forced entrance into a strange apartment with the intention of stealing qualifies as the beginning of theft; placement of a poisoned liquid for the purpose that someone should drink it and die from it is the beginning of killing a human being.

Incompleteness of commission can be established ifen all fact situation elements of the offense did not materialize. If for example the result is an element of the offense's legal fact situation, without the achievement of a result only an attempt can be found, even if the perpetrator did his utmost in the interest of achieving the result.

To Paragraph 17.

1. The attempted act's dangerousness to society is generally milder compared to the completed offense, even though many times the perpetrator could not help it that the offense remained incomplete. This is why section (1) provides for the possibility of punishing the perpetrator of an attempt also with the same penalty as is noted out for the completed offense.

Several variations of attempted act are known (completed — uncompleted, near -- remote, etc.). The weights of dangerousness of these, and of their

perpetrators, to society may differ from each other significantly. The Proposal takes all these into consideration when it speaks about the application of the penalty item of completed offenses in the case of an attempt. This order expresses that in determining the penalty the basis for starting out is the penalty item established for completed offenses, but the penalty meted out does not necessarily have to be identical with the one which would be applied in the case of a completed offense.

2. In order for the offense which remained in the attempt stage to deserve punishment, it must be dangerous to society in spite of its being uncompleted. Committing the attempt on an unsuitable object or with unsuitable tools affects its dangerousness to society. -- The object is unsuitable if it is impossible to achieve the intended result on it. The tool is unsuitable if it is not suitable to achieve the intended result under the given circumstances or under the given conditions, or in the extent or quantity in which applied.

The theory of penal law knows several solutions for evaluating unsuitable attempts:

There is a view which excludes penalizability in the case of absolute unsuitability of committing object or committing tool. Penalty must be applied only when the unsuitability of the tool or object is merely relative.

The concept opposing this emphasizes the personal side. According to this it considers all such attempts to be subject to punishment which express the

ultimate and concrete will aimed at committing the offense.

In its full consistency neither concept satisfies society's sense of fairness. The former view would leave the pickpocket unpunished who tried to steal from an empty pocket; but according to the latter even that superstitious person should be punished who wants to kill his enemy by curse.

Numerous degrees of unsuitability of attempt can be distinguished, and its proper evaluation is possible only on the basis of the given circumstances, such as for example by taking into consideration the relationship between the perpetrator and the injured party. The Proposal provides the means for this when it makes limitless mitigation of the punishment, even its omission possible. Because of this, the unconditional insuring of complete freedom from punishment would not be proper, because in the given case even the unsuitable attempt may represent a certain degree of danger to society.

3. Among those reasons as the consequence of which the completion of commission of an offense does not occur, that one has special significance when the perpetrator changes his decision and abandons the commission of his act. If this is voluntary, the Proposal excludes the perpetrator's punishability.

This order is based on that legal policy consideration that society has greater interest in the law-violating result not occurring than in punishing the perpetrator. This consideration also meets with society's sense of fairness. To wit, voluntary abandonment is usually the sign that the perpetrator is not

uninhibitedly antisocial but some motivations acting against commission of the offense are also operating within him. The promise of freedom from punishment increases the effect of these positive factors, and much more vigorously than if the law only made mitigation of the punishment possible for the case of voluntary abandonment.

Voluntary abandonment refers to the uncompleted attempt, that is, for the case when the perpetrator did not do everything in his power in the interest of committing the offense.

4. Voluntary prevention of the result can take place when the perpetrator has already completed the activity defined in the offense's legal fact situation; what is still left is the occurrence of the result, not requiring the perpetrator's further activity. Particularly the offenses against life and bodily integrity are the ones in which the perpetrator has the opportunity to prevent the result from taking place, or to lighten its severity. The legal policy considerations mentioned in point 3. in connection with voluntary abandonment are also valid for voluntary prevention of the results.

5. If the offense has several perpetrators, and one of them prevents the result's occurrence, the one who did not cooperate in preventing the result does not enjoy freedom from being subject to punishment. — In case of uncompleted attempt the voluntary abandonment is followed by the abandoner's freedom from being subject to punishment only if the act remains uncompleted, that is, if the partners in the deed do not complete it either.

6. Section (4) gives orders about the leftover-deeds. The offense remaining in the attempt stage may accomplish also the fact situation of another offense. In this latter respect the perpetrator's act is no longer an attempt, therefore there can be no abandonment. For example, if the person breaking into a strange apartment with the purpose of stealing voluntarily abandons the commission of theft he will not be subject to punishment for this, but he remains responsible for private dwelling violation [breaking and entering].

To Paragraph 18.

1. Preparation is that activity the goal of which is make it possible or to make it easier to commit some intentional offense. Such acts are for example the acquiring of equipment, preparing these, spying out ["casing"] the location and the chosen victim.

Section (1) designates all this in insuring the conditions necessary for the commission of the offense or for making it easier; encompassing thereby all types of preparatory activities. The section's remaining part is of the character of giving examples, because the invitation, offer, acceptance and agreement belong within the sphere of insuring the personal conditions of commission. — Invitation borders on instigation; the justification tied to Paragraph 21. covers their demarcation.

The common characteristic of all preparatory activities declared to be punishable is the purpose.

The preparatory activities — in contrast with attempt — do not belong

under the legal fact situation of offenses intended to be committed.

The preparation is to be punished only when the law's Special Part so orders. This occurs only exceptionally, in the cases of some of the more serious offenses.

2. The viewpoints considering which the Proposal insures freedom from penalty for the perpetrator of an attempt in the cases of voluntary abandonment or prevention of result are also valid with respect to preparation. In case of preparation the non-materialization of the offense corresponds to that goal desirable by legal policy which the prevention of result represents in the attempt stage. A report made [to the authorities] at the proper time is also an appropriate tool for preventing an offense which is in the preparation stage; this justifies its exempting effect.

3. In section (3) the Proposal regulates the responsibility for the leftover-deed. If beginning the offense does not occur due to the perpetrator's voluntary abandonment, or if beginning of commission does not take place due to activity conducted for the purpose of preventing this or in the case of his such efforts even for another reason this does not take place, or if the perpetrator reports the preparation to the authorities -- his responsibility for other offenses accomplished by the preparation remains.

Title III.

In the Special Part the Proposal uses the perpetrator's person as basis for

defining the fact situations of the individual offenses. But it is justified to punish the persons also who violate the penal law not as perpetrators but in some other way. It is therefore necessary for the General Part to contain also such orders on the basis of which it can be determined in the case of what type of behavior will someone's act be linked to the individual legal fact situation in such a way as to even though he is not the perpetrator of an act, yet he owes responsibility to the penal law.

Title III. gives orders about the offense's perpetrators, it considers the persons performing the act (performer and accomplice) and the partners (the instigator and the accessory before the fact) to be such.

Among the forms of committing an offense in company, the Proposal regulates crime pact (Paragraph 137. point 6.) and commission in group (Paragraph 137. point 11.) not in the Title dealing with the perpetrators but in the interpretive regulations. And the Proposal's Special Part deals with the forms of related offenses; thus for example with being accessory after the fact (Paragraph 244.) and failure to make a report to the authorities (for example Paragraphs 150., 219., 223 and 344.).

The Perpetrators

To Paragraph 19.

Paragraph 19. lists the perpetrators of an offense. Perpetrator is a collective concept which includes the performer, the accomplice, the instigator and the accessory before the fact.

The Proposal divides the perpetrators into two main groups: the persons performing the act and the partners. According to this, later it speaks separately about the persons performing the act (Paragraph 20.) and also separately about the partners (Paragraph 21.).

To Paragraph 20.

1. Section (1) defines the concept of culprit: accomplishment of the offense's legal fact situation is the culprit's activity. This definition refers to the most general form of being a culprit, [which is] independent or direct culprit. The direct culprit accomplishes the offense's legal fact situation alone, without the aid of other culprits. The act's independent character is not influenced by using some tool, or if the act has an instigator or an accessory before the fact.

2. The culprit may commit the offense not only alone but also together with one or more persons. If this other person can be held responsible by penal law, we speak of accomplice. Section (2) provides the definition of the concept.

The co-culprits commit the offense together, thus the activity of each of them accomplishes at least one element of the fact situation. Besides this, being a co-culprit also has an element in awareness; the definition "knowing about each others' activities" expresses this. The burglar who pries open the door, is not a co-culprit of the other thief's theft, who — without the burglar knowing about this — enters through the open door and takes the things from the room.

According to the Proposal co-culprits are possible only in an intentional offense. The concept of co-culprit is excluded in the form of carelessness appearing in negligence. Finding co-culprits would not be excluded theoretically in the case of knowledgeable carelessness. But legal recognition of careless co-culprity would make the regulation of culprits and participants unnecessarily complicated and inconsistent.

Offense jointly carried out by co-culprits must be considered a single uniform offense regardless of which one of them accomplished which movement of the legal fact situation. From this follows that each co-culprit is responsible not only for his own act but also for the jointly committed offense.

Since the co-culprit is also culprit, he is to be punished with the penalty established for the culprit.

3. The Proposal does not define the concept of indirect culprit, the person who does not commit the offense in his own person, but causes it to be committed by another person who cannot be held responsible for it by penal law. Such is that case for example when the indirect culprit causes the offense to be carried out by a person of childhood age or by one mentally ill.

Considering its essence being an indirect culprit is being an independent culprit. That is, the person who cannot be held responsible for the offense -- from the viewpoint of penal law -- must be considered as a tool of the offense with the help of which the independent culprit accomplishes the offense.

To Paragraph 21.

1. Section (1) defines the concept of instigator. The instigator's activity is inducement: that activity due to the effect of which the instigates decides to commit the offense, and as a consequence of this decision commits or attempts it.

The instigator's activity does not have to be the exclusive reason for the culprit's offense; even the thought of committing the offense does not have to originate from the instigator. The essential thing is that the instigation provide the decisive motivation in shaping the culprit's decision. This distinguishes the instigator from the psychological accessory before the fact, who strengthens the intention already developed in the culprit.

The inducement must be intentional; the intention can also be potential. The result of inducement is the offense's commission. Thus if the instigated person does not accomplish even one element of the offense's legal fact situation, instigation cannot be established. This does not exclude a resultless instigation from being an offense. That is, if preparation for the given offense is to be punished, the unsuccessful invitation to commit the offense must be valued as preparatory action. But in as much as the invitation is successful, that is no longer preparation but instigation.

If the culprit commits a more severe offense than at which the instigation was directed -- that is, with respect to the actually committed act the

instigator's possible intent is missing —, the instigator is not responsible for this more severe act.

2. Section (2) defines the concept of accessory before the fact. Being accessory before the fact is to extend assistance, that is, an activity which makes commission of the offense easier for the culprit, promotes it.

This assistance can be physical activity (for example preparation of a tool, avoidance of an obstacle), but can also be psychological (encouragement, counseling). [The offense of] being accessory before the fact can also be committed by omission if the accessory before the fact intentionally fails to perform such an obligation of his the performance of which would have been suitable to prevent commission of the offense or at least made it more difficult.

The culprit's offense as well as the accessory before the fact's rendering of assistance must be intentional. Thus the accessory before the fact must be familiar with the intentional offense to which he desired to extend assistance, his awareness must encompass his own aiding activity and its effect on the culprit's activity, and finally he must actually help the culprit in committing the offense.

Rendering assistance carelessly does not constitute being accessory before the fact, but assistance in the offense must not be rendered to a careless offense either.

3. Section (3) gives orders about penalizing the participants. The instigator as well as the accessory before the fact are to be punished on the basis of the same penalty item used for the culprit.

Such regulation of punishing the instigator expresses that the weight of his act, its dangerousness to society in general is not smaller than that of the culprit. This evaluation also agrees with society's opinion.

In general the act of the accessory before the fact is of lesser significance than those of the culprit or of the instigator, therefore in most cases his responsibility for the offenses committed is smaller than theirs. But in exceptional cases the weight and significance of the activity of the accessory before the fact may reach those of the culprit or of the instigator, therefore the Proposal makes it possible to punish them the same way. But other than this, usually the court punishes the accessory before the fact with a lighter penalty than the culprit or the instigator. Section (3) of Paragraph 87. expresses this more lenient evaluation when in the case of an accessory before the fact it provides the opportunity for twofold mitigation of the punishment to be meted out.

Chapter III.

Obstacles to Holding One Responsible by Penal Law

Chapter III. contains the obstacles to penalizability and the regulations

concerning these. The Proposal divides the obstacles to penalize ability into two groups: reasons excluding penalizability and reasons terminating penalizability. In accordance with this the chapter is divided into two titles.

Title I.

Reasons Excluding Penalizability

The reasons excluding penalizability are circumstances which exclude the occurrence of offense in spite of the fact that the concrete action accomplishes the fact situation of some offense defined in the law's Special Part. Some indispensable condition of the occurrence of offense is missing in the case of reasons excluding penalizability.

The Proposal treats the absence of complaint, and among the other reasons defined by law the absence of report (Paragraph 232. sec. (5)) and absence of desire (Paragraph 183. sec. (3)) also as reasons excluding penalizability. In these cases not the occurrence of the offense is excluded, but it is also a condition for the perpetrator to be penalizable that the person entitled to do so desire to have him held responsible by penal law. Thus the absence of this is a reason which excludes penalizability. But the other reasons defined in the law which exclude penalizability are in general based on the fact that law abiding behavior cannot be expected of the perpetrator (for example Paragraph 150. sec. (2), Paragraph 241. sec. (1)).

The reasons listed in Paragraph 22. points b), c), f), and g) do not in every

case exclude the perpetrator's penalizability, but in cases of conditions defined in the Proposal they only limit the extent of his responsibility. Besides the reasons excluding penalizability, Title I. also gives orders about these.

To Paragraph 22.

1. Paragraph 22. lists the reasons which exclude penalizability. Paragraphs 23. through 31. give detailed orders about the ones listed in points a) through h). The other reasons defined by law, mentioned in point i) of the list summarizes those circumstances about which Chapter VIII. concerning soldiers (Paragraph 123. secs. (1) and (3)) and the Special Part give orders. The latter contains such orders for the regulation of failure to make a report (Paragraph 150. sec. (2), Paragraph 219. sec. (2), Paragraph 223. sec. (2)), proof of facts (Paragraph 182), the desire (Paragraph 183. sec. (3)), incest (Paragraph 203. sec. (2)), insulting the authorities or official person (Paragraph 232. secs. (4) and (5)), false witnessing (Paragraph 241. sec. (1)), concealment of mitigating circumstance (Paragraph 243. sec. (2)), accessory after the fact (Paragraph 244. sec. (4)), and bribery (Paragraph 253. sec. (3)).

2. Paragraph 22. contains only those reasons for excluding penalizability defined in the Proposal and does not exclude other reasons which exclude penalizability which have developed in penal law theory and in the practical application of law from being given consideration (for example agreement of the injured party, permission by statute, fulfillment of professional responsibilities, etc.).

Childhood Age

To Paragraph 23.

A person of childhood age cannot be the subject of an offense. If a person of childhood age accomplishes the legal fact situation of some offense, due to the fact that the subject is missing no offense occurs.

A person is of childhood age who has not completed his fourteenth year of life. In establishing the age limit the Proposal considers that young people generally complete their elementary school studies at fourteen years of age, by this time they acquire the basic knowledge necessary for living together in society. This naturally does not exclude that when necessary the proper authorities carry out appropriate protective and defensive measures against a person of childhood age who accomplishes the legal fact situation of an offense. Order No 1/1974. (VI. 27.) CM [27 June; Minister of Education] concerning the custody authority procedures provides the possibility for this.

III Mental Health

To Paragraph 24.

1. A person who has completed his fourteenth year of life can be the subject of an offense if he possesses the ability of reason. In the absence of ability to reason the offense has no punishable subject, therefore the offense does not occur either. Section (1) gives orders about such

absence of the ability to reason for which there are biological reasons.

The Proposal summarizes the biological reasons which exclude the ability to reason under the collective concept of ill mental health. The five reasons listed do not exhaust all biological reasons belonging within this fear of ill mental health, because there are also other such pathological cases which affect the ability to reason.

Mental illness is such an illness of generally long duration which causes severe disturbances in the higher orders of nerve operation and which among other things also affects the worlds of thought, will, and emotion of the ones suffering in it.

Feeble-mindedness is not an illness but a decreased condition of intellectual capability the reason of which can be damage with which the brain was born or possibly suffered during childhood. In its more severe degree the feeble-minded person is capable only of limited intellectual activity in all areas of life; his standards of comprehension, will, and emotion are low.

Intellectual deterioration (dementia) [Lat.] is the permanent, for the most part progressive decline of the already developed intellectual capacity, caused by various illnesses and occurring in various extents — at times extending only over certain areas of intellectual operations.

The conscious is the highest order function of the central nervous system. In

general, disorder of the conscious is of temporary passing character; besides illness of the central nervous system, its reason may be consumption of poisonous materials (narcotics, alcohol, etc.), or it may also occur as a consequence of certain biological processes. The effect of psychological change lasting sometimes only for seconds can also be very large on the person's actions (such is for example the narrowing of the conscious which also occurs in actions during emotional outbursts). By itself none of the forms of the disorder of the conscious are factors affecting the ability to reason, but it may have such effect depending only on its severity.

Confusion of the personality may also exclude the ability to reason. From the penal law viewpoint the most significant form of this is psychopathy. This in itself is not an illness but a personality which can lead to inadequate behavior from the viewpoint of society's expectations. It may be of such degree as to exhaust the concept of illness and be equivalent to mental illness, thus resulting in the exclusion of ability to reason.

2. According to the Proposal penalizability is excluded if the condition of mental illness made the perpetrator unable to recognize the consequences of his action, or to act in accordance with this recognition. Thus the condition of mental illness in itself cannot be valued as a reason to exclude the ability to reason, on the other hand the inability to recognize the consequences of the action or to act in accordance with this excludes the ability to reason only when this is a consequence of the ill mental condition.

3. The extent and character of ill mental condition may also vary. If they are of such extent which does not exclude, merely limits the perpetrator in recognizing the consequences of the action or in acting in accordance with this, the offense materializes. But the limited nature of the ability to reason decreases the perpetrator's responsibility to penal law; the possibility of unlimited mitigation of penalty is the consequence of this according to Paragraph 37. section (4).

To Paragraph 25.

1. Society's experience, sentencing practice, criminological research and penal statistics unanimously prove the existence of close relationship between criminal activity and consumption of alcohol. Steps must be taken against alcoholism also in the interest of overcoming criminal activity, and effective penal policy measures are also necessary for this. The alcoholic condition directly influences the ability to reason, and the processes of the conscious and will necessary to become the subject of an offense. Intoxication — depending on its extent — causes various degrees of conscious disorder. Thus it would follow from the orders of Paragraph 24. that penal law responsibility for an act committed in intoxicated condition is excluded or limited. But such a regulation is not practical from the penal policy viewpoint. Even though the penal law is not the primary tool of the fight against alcoholism, considering the interrelationship between criminal activity and alcohol consumption it is justified to make a distinction between the

intoxicated condition resulting from one's own fault and other cases of conscious disorder, and to punish the perpetrator committing an offense in intoxicated condition without consideration for his being intoxicated. This is why in such cases the Proposal excludes the application of Paragraph 24.

These penal policy viewpoints provide guidance also when the perpetrator accomplished the action in a dazed condition deriving from his own fault. This dazed condition can be caused primarily by using narcotics; consistent measures taken against law violations committed in such condition may also aid in obstructing the spreading of narcotics use.

The Proposal therefore does not permit the orders of Paragraph 24. concerning the absence of reason and limited reasonability to be applied in the cases of intoxicated or dazed conditions deriving from one's own fault.

2. Paragraph 25. refers to the generally occurring form of intoxication. Forms of the intoxicated condition differing from standard drunkenness are the pathological drunkenness -- which is a condition equal to acute mental illness -- and the abortive pathological drunkenness. In these cases the Proposal does not exclude the application of Paragraph 24., but judgement of the illness cases of intoxication is such a question of application of law depending on the given circumstances about which it is not necessary to give separate orders in the law.

Duress and Threat

To Paragraph 26.

1. Duress and threat are causes affecting the reasoning ability from the outside, as a consequence of which the man under their effect displays a behavior which is not in accord with his will. The duress is physical influence, force, which may be expressed for example in mistreatment, causing of pain, or being tied down.

Threat is — according to the interpretive order included in Paragraph 138. — is the promise of a severe disadvantage, which is suitable to cause severe fear in the threatened. The threat does not necessarily have to cause fright or extraordinary nervous condition, but it is sufficient that the threatened consider the possibility of the occurrence of the promised severe disadvantage to be serious and move him to prevent it — even at the cost of accomplishing the legal fact situation of some offense.

2. Duress and threat, depending on the strength of its influence or on the characteristics of the person who fell under its influence, may make him unable to behave in accord with his will, or may limit him in this. In the former case no offense takes place because the subject of offense is absent. Therefore the person accomplishing the offense's legal fact situation is not punishable. The person who applied the duress or threat can be held responsible as an indirect culprit. Inasmuch as the duress or threat limited the perpetrator in behaving in accordance with his will, the offense does take place but the court may

ease the penalty without limit according to Paragraph 87. section (4).

The Mistake

To Paragraph 27.

1. The Proposal regulates two types of mistakes, the factual mistake and the mistake in dangerousness to society. These cases of making a mistake exclude intentional guilt. If the Special Part punishes only the intentional commission of an act, the mistake excludes punishability.

One of the conditions for establishing intentional guilt is that the perpetrator's awareness encompass the circumstances belonging to the legal fact situation of the offense. In the case of factual mistake the perpetrator makes a mistake in such a circumstance, therefore his intentional guilt cannot be established. In order to establish intentional guilt, the perpetrator must know not the concepts defined in the legal fact situation, for example "official person", "public danger", or "museum object", but the facts, circumstances in life which serve as foundations for these. This is why one cannot speak of factual mistake if the perpetrator for example mistakenly believes that the social court's member mistreated by him is not an official person.

The commission of offense may also have such objective circumstances — primarily the offense's object, method, implement — which are not contained in the legal fact situation but which play significant roles from the viewpoint of accomplish the offense. Mistake regarding such circumstances is also a factual

mistake, for example the perpetrator uses a tool the dangerous nature of which he did not recognise.

2. Knowledge of the act's dangerousness to society is a condition of establishing intentional guilt. The person who commits the deed under that mistaken assumption that it is not dangerous to society, cannot be punished for intentional offense.

Knowledge of dangerousness to society means that the perpetrator has knowledge of society's attitude regarding the act; he knows that statute prohibits the act's commission, but knowledge of dangerousness to society can be established also if the perpetrator does not know about the statutory prohibition but knows that his behavior is contrary to the rules of living together in society.

Knowledge of the act's dangerousness to society may be excluded by the mistaken assumption of some reason which excludes dangerousness to society (for example justified defense, extreme necessity, agreement of the injured party), but also other reasons (for example erroneous information received from the authorities).

Mistaken assumption of the absence of dangerousness to society can exclude punishability only when the perpetrator had a valid reason for the assumption. In this case the perpetrator cannot even be punished for careless offense. Not only that person makes a mistake for a valid reason regarding dangerousness to society who has no way at all to clear up his mistake, but also the person

who was not able to do so in the given situation even in spite of the circumspection expectible of him. If the perpetrator has no valid reason for the mistake, the mistake is caused by carelessness. Section (3) gives orders regarding this.

Mistake exists not in dangerousness to society but in the law if the perpetrator errs not in the act being an prohibited one but in its legal evaluation, qualification, or in the penalty item. This has no effect on penal law responsibility.

3. Inasmuch as the perpetrator's mistake regarding the fact in question or the act's dangerousness to society is caused by carelessness, and careless accomplishment of the legal fact situation given is also an offense, the mistake does not exclude the perpetrator's punishability but his responsibility exists for an offense committed out of carelessness.

Low Degree of the Act's Dangerousness to Society

To Paragraph 28.

The Proposal considers low degree of the act's dangerousness to society to be a reason for exclusion from penalizability. This exists when the act accomplishing the fact situation defined in the Special Part is dangerous to society in such a low degree that even the most lenient punishment applicable according to the law is unnecessary. Paragraph 71. section (1) gives orders that in this case the perpetrator must be given a reprimand.

Justifiable Defense

To Paragraph 29.

1. An act qualifying as justifiable defense is directed against an illegal attack. It accomplishes the legal fact situation of some offense, yet it is not punishable because fending off an illegal attack is not dangerous to society.

Section (1) defines the conditions of justifiable defense. -- Such actively attacking act must be understood to be an illegal attack which accomplishes the legal fact situation of some offense. But justifiable defense situation also exists if the attacker cannot be the subject of an offense (child, mentally ill, etc.).

Justifiable defense is in order not only against an attack which has already begun, but also an immediately threatening one. Immediate threat means that there is no obstacle to beginning the attack, and its start within a short time can be feared.

The offense's objects are: the person doing the defending, or other persons, the property of these or the public interest.

Justifiable defensive act is such behavior which is directed at fending off the illegal attack, aimed at preventing the occurrence of harm. This behavior must be necessary to fend off the offense. In general there is no requirement to escape from an illegal attack, thus it does not exclude the necessity of

defense that the attacked person could have escaped. It is also included in the necessity that the defensive act cannot be disproportionately more severe than the illegal attack.

2. It happens in some cases of justified defense that the perpetrator exceeds the necessary extent of defense. -- An act fending off an illegal attack can be considered justifiable defense only as long as the attack lasts, or its direct danger exists. The defensive act exceeds the necessary extent when the harm caused by it is significantly, disproportionately greater than what would have occurred from the illegal attack.

Section (2) excludes the punishability of the person who exceeds the limits of justifiable defense because he is unable to recognize the necessary extent of defense due to fright or justifiable excitement. Fright and excitement are such conditions caused by the illegal attack or its direct danger, in which the person fending off the attack mistakenly evaluates the given situation and fends off the attack with a disproportionately more severe act than what danger it actually contained. Fright and justifiable excitement cannot be the basis for applying Paragraph 24.

3. Section (3) gives orders about the case when fright or justifiable excitement only limit the perpetrator in recognizing the necessary extent of defense. This does not exclude the perpetrator's penalizability, but the punishment can be mitigated without limit according to Paragraph 87. section (4).

Extreme [Terminal] Necessity

To Paragraph 30.

1. It is not dangerous to society if the perpetrator accomplishes the legal fact situation of an offense in extreme necessity. Extreme necessity is such a danger situation which threatens the person or property of the one acting in extreme necessity, the persons or property of others, or the public interest. The danger must be direct and unavoidable by other means. Directness of the danger means that occurrence of the harm deriving from it can be expected within a short length of time. And the danger cannot be avoided by other means in that case when it is possible only by accomplishing the legal fact situation of some offense because other methods of defense would not produce results.

The danger situation may be created by a natural occurrence, an animal's attack, another person's unintentional behavior or one accomplishing an offense, excepting the case of illegal attack. That is, defense against the latter belongs within the sphere of justifiable defense (Paragraph 29.). It is a condition for establishing extreme necessity that the one acting in extreme necessity should not be burdened either by intentionality or by carelessness in causing the danger.

The act committed in extreme necessity is not dangerous to society if it causes smaller harm than the one the perpetrator endeavored to fend off.

2. Section (2) excludes the punishability of an act carried out to fend off a

danger situation also in the case when the harm caused by the defense was the same size or greater than the one the perpetrator endeavored to defend against, but due to fright or justifiable excitement he was unable to recognize the size of the harm deriving from the danger or from the defensive act. The viewpoints related to judging fright and excitement are explained in point 2. of the justification attached to Paragraph 29.

3. If the fright or justifiable excitement merely limit the perpetrator in recognizing the magnitude of the harm deriving from the danger situation or from the defensive act, his punishability is not excluded. But the Proposal here also affords the possibility for unlimited mitigation of the penalty according to Paragraph 87. section (4).

4. In certain professions it is among the duties of the persons filling them to stand their ground in certain situations even in dangers they are not guilty of having caused (for example firefighter, policeman). Therefore according to section (4) terminal necessity cannot be established to the benefit of a person whose duty it is to accept danger due to his profession. This regulation naturally excludes the establishment of extreme necessity only for that case when the person practicing such profession would [thereby] be rescuing [only] his own person from the danger.

Lack of Complaint

To Paragraph 31.

1. Authorities acting from office is the basic principle of the penal process

(See Paragraph 2.). But the character of certain offenses justifies that penal process should be able to begin only in the case when the injured party or another person entitled to do so makes a declaration aimed at desiring to punish the perpetrator. This declaration is the [private] complaint which is the condition for starting the penal process, and its absence is an obstacle to penalizability. The complaint is a legal institution of mixed character, belonging partly in the penal law and partly in the penal process law.

The Proposal's Special Part defines those cases when the offense can be punished only upon complaint. Paragraph 170. section (7) (light bodily harm), Paragraph 183. (violation of the privacy of a private residence, violation of personal secret, violation of mail secret, slander also libel , injury to someone's honor, desecration), Paragraph 209. (forced sexual intercourse, violation of decency, and cases of corruption not qualifying as more severe), as well as Paragraph 331. (theft causing loss of personal property, embezzlement, swindle, unfaithful management, damage causing, illegal acquisition, receiving stolen goods, arbitrary taking of a motor vehicle if the perpetrator is related to the injured party) contain such orders.

The Proposal does not determine a deadline for submitting the complaint; determination of this belongs under the penal process law.

2. Primarily the injured party, that is whose rights or rightful interest were injured or endangered by the offense, has the right to submit the complaint [See Paragraph 53. sec. (1)].

If the injured party is unable to act (Ptk. Paragraphs 15. through 17. Civil Code), making the complaint is the exclusive right of his legal representative. In the case of the injured party's limited ability to act (Ptk. Paragraphs 12. and 13.) both the injured party and his legal representative have the right to submit the complaint.

The Court of Guardians' task is to protect the personal and property interests of people under legal age (Ptk. Paragraph 12. sec. (2)), as well as of persons of legal age who are unable to act or are limited in their ability to act due to physical or intellectual deficiency. In the interest of carrying out this task, the Proposal insures that in as much as the injured party has limited acting ability or is unable to act, the Court of Guardians may submit the complaint independently, in parallel with the persons authorized to do so.

3. If the injured party dies prior to the submission of the complaint, his right to do so transfers to his next of kin (Paragraph 137. point 5.).

4. Section (5) gives expression to the principle of the complaint's indivisibility. The penal process must be conducted not only against the perpetrator named in the authorized person's complaint, but against all perpetrators of the offense.

5. Section (6) excludes the withdrawal of complaint. This regulation urges the person authorized to complain to consider the initiation of holding someone responsible by penal law, and desires to prevent abuse of the complaint,

for example that the person authorized to make the complaint should obtain considerations from the perpetrator by promising to withdraw it.

Title II.

Reasons for Terminating Punishability

The reasons which terminate punishability occur after commission of the offense. The perpetrator's punishability exists between the time points of committing the offense and the occurrence of the reason which terminates punishability, and it is terminated only by the circumstance occurring later.

To Paragraph 32.

1. Paragraph 32. lists the reasons which terminate punishability. Among these, Paragraphs 33. through 36. give detailed orders about the statute of limitations and the disappearance of the act's dangerousness to society.
2. The perpetrator's death also terminates the punishability. But among the measures the confiscation of property is not excluded by the perpetrator's death; the process aimed at confiscation (Be. Paragraph 375.) may be conducted in this case also.
3. Pardon is such a fact [sic] by which the state gives up all or part of its penal law demands. This renouncement may occur either before establishing the

penal law responsibility by legally final decision, or following this. In the former case the pardon terminates punishability for the offense, while in the latter it excludes the administration of punishment (Paragraph 66. point c)), but it may also provide relief from the disadvantages tied to prior penal record (Paragraph 106.).

The right of granting pardon is practiced by the Presidential Council of the Hungarian People's Republic according to Paragraph 30. section (1) point j) of the Constitution. Considering the extent of its effect on the person the pardon may be general public pardon and individual pardon.

4. Those circumstances — terminating punishability — are to be understood by other reasons defined in the law which the regulations of the General Part and of the Special Part define in connection with regulating the individual legal institutions, or with establishing the legal fact situations of the individual offenses. Such can be found in the regulation of attempt (Paragraph 17. sec. (3)), preparation (Paragraph 18. sec. (2)), granting of probationary release (Paragraph 73. sec. (3)), conspiracy (Paragraph 139. sec. (5)), rebellion (Paragraph 140. sec. (3)), espionage (Paragraph 147. sec. (4)), failure to support (Paragraph 196. sec. (4)), and violence against an official person (Paragraph 228.^② sec. (6)). Their primary justification is the consideration that the law should provide the incentive for the perpetrator to abandon his illegal behavior or to prevent the consequences of his behavior, also by granting the favor of terminating his punishability.

^② Perhaps 229 (typo?) — Translator.

Lapse of Punishability

To Paragraph 33.

1. Lapse is termination of the state's penal law demand due to the passing of time. The passing of time can terminate the penal law demand when its actual existence and legal consequence has not yet been determined by the court, but it may terminate this also after a judgement is made. In the former case punishability lapses, while in the latter the lapse of punishment (Paragraph 67.) occurs.

There are practical viewpoints in favor of the institution of lapse. That is, holding someone responsible by penal law is efficient and has preventive effect only if commission of the offense is followed frequently [sic; probably should read "rapidly". Translator.] by the establishment of responsibility. But the institution of lapse is also justified by that practical viewpoint that with the stretching of time difficulties of proof may also occur. And this not only hinders the work of the authorities but also makes the perpetrator's defense more difficult, and by all these may endanger the materialization of legality.

In general the Proposal establishes the time for lapse of punishability identically with the upper limit of the penalty item for the offense. Special regulation is necessary for that case when the offense may in the alternative also be punished by death, for this case the Proposal establishes

the time for lapse in twenty years. -- Too short a time of lapse would be contrary to the purpose of the legal institution. Therefore the Proposal sets that time with the passing of which punishability lapses, in at least three years.

If the perpetrator commits several offenses, punishability of the individual offenses lapses separately in each case. Commission of additional offense does not influence the lapsing of an earlier offense.

2. Section (2) excludes the lapsing of crimes against humanity and war crimes. This is in harmony with the international agreement accepted by the General Assembly of the United Nations Organization regarding the exclusion of statute of limitations for war crimes and crimes against humanity, which was published by legal decree No 1. of the year 1971.

To Paragraph 34.

The time of lapse regulated by Paragraph 33. section (1) begins when the offense is committed. However, the time point of commission differs with the different types of legal fact situations. Taking these differences into consideration, Paragraph 34. regulates in detail the beginning date for the deadline of lapse.

Point a) refers to those types of completed offenses which the science of penal law calls 'formal' or 'result' offenses. In case of formal offense

the starting day for the statute of limitations is the day on which the perpetrator completed the act which accomplishes the legal fact situation (for example prohibited border crossing). In case of a result offense the starting day for the statute of limitations is the day when the result defined in the legal fact situation occurred, for example in swindle, the causing of damage.

The starting day for lapse of attempt or of preparation according to point b) is that day on which the perpetrator performed the last activity qualifying as attempt or preparation.

Point c) regulates exclusively the starting day for the lapse of offenses accomplished by failure to perform obligations, the so-called pure failure offenses (for example failure in the obligation to make a report to the authorities, concealment of mitigating circumstance). The starting day is the last day available for legal fulfillment of the obligation.

The condition offense becomes completed as soon as the illegal condition is created, and this completed offense remains in existence until the illegal condition ends (for example keeping a firearm without permit). The starting day for the lapse of such offense is the day when the illegal condition ends either due to the will of the perpetrator or through discovery of the offense or for other reason.

To Paragraph 35.

1. Lapse of punishability may occur because the authorities proceeding in penal matters did not obtain knowledge of the offense, or even though they obtained knowledge, some reason (for example the measures taken to apprehend the perpetrator do not lead to result) obstructs the penal procedure. But since it is a fundamental requirement that the authorities proceeding in penal matters discover all offenses and hold the perpetrators responsible, Paragraph 35. contains also such regulations which delay the occurrence of lapse.

2. Section (1) gives orders about the interruption of the statute of limitations. Its legal effect consists of deleting the time spent until the day of interruption out of consideration, and the deadline for the lapse begins over again on the day of the interruption.

Interruption of the time for lapse in penal matters is caused by a penal process act of the proceeding authorities. Penal process act is that measure taken by the proceeding authorities as regulated by the penal process law, which serves to advance the process. A measure of administrative character does not interrupt the lapse.

The penal process act of the authorities interrupts the lapse if it is directed against the perpetrator and is in connection with the same offense. But it is not a condition for interrupting the lapse that the perpetrator's

identity be known to the authorities, because investigation may be ordered even in the case of an offense committed by an unknown culprit.

Commission of additional offense has no interrupting effect on the lapse.

3. Suspension of the penal process is temporary closing of the process which may take place in the investigative as well as in the court stage. Its conditions are defined by the rules of the penal process (Be. Paragraph 137. secs. (1) through (3), Paragraph 169. secs. (1) and (4), Paragraph 182. sec. (2), Paragraph 207. sec. (3), Paragraph 249. point c)). In general these are circumstances in which it is not justified that the duration of the procedure's suspension should count towards the deadline of lapse, (this would be contrary to the purpose of lapse. An exception from this general rule is if suspension of the process took place because the perpetrator was in an unknown location, or became mentally ill after committing the offense. In such cases the duration of suspension counts towards the deadline of lapse.

4. It would be contrary to the purpose of placement on probation (Paragraph 72.) if the lapse of punishability would run during the duration of the probationary time; to wit in this case it could happen that the placement on probation could not be terminated due to the lapse of punishability which occurred in the meanwhile, even though the conditions of this exist (Paragraph 73. sec. (3)). Therefore the Proposal orders that in the case of placement on probation the probationary time's duration does not count towards the deadline of lapse.

End of the Act's Dangerousness to Society

To Paragraph 36.

If the act accomplishing the legal fact situation of offense was dangerous to society when it was committed but at the time it is judged its dangerousness has already disappeared, the Proposal treats it as a cause terminating the perpetrator's punishability. This is also valid if at the time of judgement the act is no longer dangerous to society, or if it is dangerous to only such a minor extent that even the most lenient punishment applicable according to the law is unnecessary.

Chapter IV.

Penalties and Measures

The legal consequences defined in the law: the penalties and measures fulfill an important role in achieving the goal of the penal law (Paragraph 1.). The usual legal consequence of offense is punishment, which means legal disadvantage for committing the offense, in proportion to the offense's dangerousness to society. The condition for applying a penalty is that the act's perpetrator be subject to punishment in the interpretation of the law and the court establish guilt.

But legal consequences of another character besides penalties are also necessary to achieve the goal of the penal law, the Proposal summarizes these under the collective name of measures.

Title I.

The Penalties

Penalty is not a self-serving thing, but stands in the service of realistic social, legal policy and penal policy goals. Therefore the orders of Title I. concerning penalties are introduced by defining the goals of punishment.

One of the foundations of scientifically classifying the penalties is the character of the disadvantage caused by the penalty (death penalty, penalties depriving and limiting freedom, penalties involving property, etc.). This subdivision is not necessary in the penal law, therefore the Proposal lists the penalties without classification. However, it distinguishes main penalties and secondary penalties.

The orders concerning the individual penalties determine other than the basic contentual elements of the penalties, including here also the the degrees of administering loss of freedom and the penal material legal character rules of conditional granting of freedom. — Title I. also gives orders about those reasons which exclude execution of the penalty; among these it regulates in detail the lapse of punishment.

The Penalty's Purpose

To Paragraph 37.

1. Usually a penalty must be applied for committing an offense, therefore the

punishment has a particularly important role in achieving the goals of the penal law.

Penal law punishment is legal disadvantage applied against the perpetrator for committing an offense. Its conceptual element is the taking away of rights or goods from the punished person. The causing of legal disadvantage is not a goal but a tool which serves the punishment's goal.

2. In order to apply the penal law uniformly, the Proposal defines the goal of punishment. In defining this, it emphasizes the protection of society as well as particular and general prevention. — Definition of the punishment's goal is general, thus it applies to all types of penalties regulated in the Proposal.

Particular [individual] prevention can be achieved in three ways.

The socialist penal law endeavors primarily to correct the perpetrator, as the most desirable result. But it is a fact of experience that this effort does not lead to success in some of those convicted.

Because of this, we do not reject that method either, when the convicted person restrains himself from committing additional offenses only because of fear of additional penalties. This is the restraining effect of punishing.

Finally the individual preventive effect of punishing is achieved in certain cases by depriving the convicted person of the physical possibility of committing additional offenses. This result is involved in the death penalty, as well

as in the punishments involving temporary loss of freedom. Other penalties, for example the prohibition to practice an occupation or banishment also have effects limiting the opportunity of commission.

The punishment's goal is not exhausted in individual prevention, because it must also serve the goal of holding others back from criminal activity.

Types of Penalty

To Paragraph 38.

Section (1) contains the list of main penalties.

Section (2) lists the supplementary penalties. Since monetary fine penalty takes its place among the main penalties, the name given to monetary fine punishment applied as supplementary punishment is: supplementary monetary fine punishment.

Section (3) accomplishes an idea of lawmaking which took shape for the first time in our penal law after the liberation. In numerous cases the punishment's goal can be achieved by meting out some punishment independently, which otherwise would be considered as supplementary punishment. The less restrictive treatment of penalty types corresponding to this serves individualization better than rigid separation of main and supplementary punishments.

Section (3) does not determine the sphere of independent application of supplementary punishments in the Special Part, but makes it possible by a general

order. The only legal condition is that in the case of the given offense, application of the supplementary punishment desired to be meted out as independent punishment be otherwise in order. Obviously it is not a condition for applying a supplementary punishment as independent punishment that along with it a main penalty also be applied. But other conditions of applying secondary punishments as they appear in the General and Special Parts do not lose their validities. Paragraph 89, determines the viewpoints of application.

If the secondary punishments, the Proposal does not provide the possibility of independent application of prohibition to participate in public matters and supplementary monetary fine penalty. Prohibition to participate in public matters deprives the convicted person of those rights which assure the citizens participation in public matters. Application of this supplementary punishment is justified only in those severe cases when the meting out of loss of freedom cannot be dispensed with either. Therefore applying the prohibition to participate in public matters as independent punishment would not be suitable to achieve the punishment's goal. And there is no need to apply supplementary monetary fine punishment as independent punishment because monetary fine punishment also appears among the main punishments.

The Death Penalty

To Paragraph 39.

Maintenance or abolishment of the death penalty is among the most debated questions of penal law. The socialist progress of law is moving towards

gradually diminishing and — as the ultimate goal — ending the death penalty. Justification for maintaining it can be judged primarily on the basis of whether it is indispensable or not from the viewpoints of particular and general prevention. In the cases of the most severe offenses against life, against the state and the military offenses, terrorist acts multiplying on the international scale, at the present time the protection of society cannot dispense with the death penalty. Therefore the Proposal takes position in favor of maintaining it.

But in the Proposal's penalty system the death penalty is a penalty of exceptional character, which is also expressly stated by Paragraph 84. Besides the narrow circle of offenses threatened by the death penalty and the special viewpoint of meting out the death penalty, it also expresses the exceptional character of this penalty that in the Special Part the death penalty always appears as an alternative penalty, besides the loss of freedom which is more lenient than it is. Finally that order of section (1) also reflects this exceptional character which prohibits the use of the death penalty against a person who at the time of the offense's commission had not yet completed his twentieth year of life. Only the soldiers are exempted from this rule (Paragraph 126.).

For that case when the death penalty is changed to another penalty due to clemency, the Proposal does not determine the type and extent of the penalty taking its place. That is, there is no need for the penal law to limit the practicing of the right of clemency.

Loss of Freedom

To Paragraph 40.

1. Loss of freedom is one of the most general penalty types in the Proposal's penalty system. The Special Part threatens the perpetrators of the majority of offenses with this sanction -- or with this sanction also.

Loss of freedom receives much criticism -- mainly in the professional literature -- because of its disadvantageous side effects. The majority of these can be summarized by the concept of prison damage, which is caused by the difficulties of being isolated from society, criminal environment, interruption of family ties, as well as the difficulties of fitting again into the free society. These criticisms contain many realistic objections. But the solution is not deletion of loss of freedom from among the penalties, but development of such a system of administering it which eliminates the prison-damages or decreases their harmful effect to a minimum.

Loss of freedom is necessary as the penalty with the most powerful preventive effect. Due to the perpetrator's isolation, loss of freedom directly serves society's protection. Beyond this safety viewpoint, the educational task of punishing cannot be solved without it either. Results can be expected from the efforts expended to shape the convict's personality only if it takes place for the necessary length of time and with the exclusion of disrupting circumstances, if the convict cannot extricate himself from under it as he pleases.

2. The Proposal does not determine the content of loss of freedom. The legal

disadvantage content of this type of penalty can be summarized in loss of personal freedom. Its educational task is also part of the essence of loss of freedom, as is that during its execution the convict should perform socially useful work. Statutes give orders about all these.

3. According to the Proposal the loss of freedom is of indeterminate or definite duration. Loss of freedom for life, which is the most severe punishment after the death penalty, is of indeterminate duration. The Special Part's penalty items never contain loss of freedom for life alone, but always as an alternative with the death penalty and with loss of freedom for definite duration. Even though the Proposal does not state the exceptional character of loss of freedom for life, this follows naturally from its definition as alternative punishment to the death penalty which is of exceptional character. Thus its application is in order only in such cases when the goal of punishment, society's protection even though does not justify the death penalty, the perpetrator's permanent isolation becomes necessary.

4. The Proposal determines the minimum duration of loss of freedom for a determined length of time in three months.

Based on practical experience, there appear to exist well-founded objections to loss of freedom of shorter duration than this. The prison-damage can be of damaging effect even in a short time, but too short a duration is insufficient for educationally oriented influencing of the convict. Thus the situation is not that in general loss of freedom of brief duration would be unsuitable to achieve the punishment's goal, merely that the duration should not be too

brief; it should reach that minimum time within which there is no chance at all for influence of educational effect, favorable criminalpedagogical affect.

The Proposal endeavors to keep those who commit offenses of lesser weight for the first time from committing additional offenses by applying lighter penalties than loss of freedom. But there may be perpetrators among these also in whom favorable results can be expected only by applying loss of freedom for a short duration.

The Proposal determines the maximum duration of loss of freedom for a determined length of time in fifteen years. Fifteen years is sufficient time for the convict to feel the severity of the legal disadvantage applied against him, and for the means to be available for reeducation also — in all such cases when this can be accomplished at all. The cases of agglomerate and overall punishments are exception from this, when the unique viewpoints of meting out the penalty require the possibility of extending the upper limit. In such a case the maximum duration for loss of freedom is twenty years.

To Paragraph 41.

1. Loss of freedom must be administered in an institution for administering punishment. Institution for administering punishment is a collective concept which includes the institutions of various degrees of administering severity and also certain unique institutions for administering punishment (for example the hospital for administering punishment).

Individualization is a generally accepted principle of modern punishment

administering activity. Differentiated execution of loss of freedom insures the possibility of this.

2. The Proposal established three degrees for administering loss of freedom: penitentiary, prison and jail. The following considerations justify the three degrees:

From the viewpoint of reeducationability three basic groups of convicts can be recognized: the multiple repeat offender convicts and the ones who have committed very severe offenses, those who have been convicted for intentional offenses whose punishments are of relatively longer duration or who have already been punished before, and finally those who have been sentenced for intentional offenses for relatively shorter durations of loss of freedom and to loss of freedom for careless offenses. Therefore creation of three degrees of carrying out the punishment seems to be the most correct solution. — The means of differentiation are also of such character that in case of more than three degrees sufficient distinction cannot be made between the degrees, the differences between them cannot be felt sufficiently; therefore more than three degrees offer no penal policy advantages, but make the regulation complicated.

The names for the degrees of administering punishment have been accepted for a long time in our legal and everyday languages, and their relationships to each other in the public's knowledge also correspond to the listing in the Proposal — progressing from the more severe to the lighter ones.

3. The order of carrying out the loss of freedom, the rights and obligations

of the convicts are important questions which must be regulated by statutes. But due to its character this belongs under the separate legal statute dealing with administration of the penalty, and not in the Penal Code. The Proposal contains orders corresponding to this.

4. From the nature and goal of loss of freedom follows that changes will take place in the areas of the convict's rights and obligations of citizenship during its administration. But regulating the legal consequences of the administration of punishment with the desire for completeness would exceed the penal law's framework. Therefore the Proposal states it in general terms that the rights and obligations of citizenship which are contrary to the purpose of punishment are suspended. It would be contradictory to the character of loss of freedom in every respect if the convict during the administration of this could also exercise those rights of his by which the citizens participate in the handling of public matters; therefore the Proposal emphasizes this legal disadvantage. This regulation is independent of whether or not prohibition to practice the right of participating in public matters has been applied against the convict as supplementary punishment.

To Paragraph 42.

1. In deciding the grouping of convicts to be classified under the individual administrative degrees of loss of freedom the Proposal takes it into consideration that the science of penal law as well as the practice of administering penalties knows several viewpoints regarding the categorization of convicts. In

general the character of the offense committed, the extent of punishment and the convict's prior life are those circumstances which must be taken into consideration informing the categories of convicts. But none of the viewpoints can be considered to be such which could be the exclusive basis for categorization. This is also valid in regulating in which cases must the loss of freedom be administered in a penitentiary.

The penitentiary is the strictest degree of administering loss of freedom, where those convicts are sent whose education to become law abiding citizens is the most difficult.

Loss of freedom for life is meted out only against the Perpetrators of the most severe offenses. This is also valid for that case if, due to clemency, loss of freedom is applied instead of the death penalty. From this follows that for the administration of such loss of freedom only the strictest degree can be suitable.

2. Certain categories of offenses due to their nature reflect such antisocial orientation that it is necessary to apply the strictest degree of administering the penalty to their perpetrators. These offenses are: offenses against the state and against humanity, terrorist acts, illegal gaining of control of an aircraft, and further the taking of a human life, forced sexual intercourse, violation against modesty, causing of public danger and robbery in cases qualifying as more severe, and also those military offenses which are also punishable by the death penalty.

It is in harmony with the penitentiary's character that only loss of freedom sentences of relatively longer duration are carried out here. A regulation which would make it possible also to administer loss of freedom of a few months in the strictest degree would be contradictory. Therefore loss of freedom meted out for offenses listed in the foregoing can be administered in penitentiary only if its extent reaches or exceeds three years.

3. The multiple repeat offender convict (Paragraph 137. point 14.) is usually difficult to educate due to these personal traits. Therefore it is justified to administer the penalty in penitentiary without regard to the character of the offense committed. But if the extent of punishment does not reach two years, it is unnecessary to administer it in penitentiary.

To Paragraph 43.

Prison is a degree of administering loss of freedom milder than penitentiary but more severe than jail.

1. According to the Proposal prison is the general grade of administering loss of freedom meted out for felony (Paragraph 11. sec. (2)), the more severe form of offense. Thus in general loss of freedom meted out for felony must be administered in prison. It is an exception from this if according to Paragraph 42. the administering is done in penitentiary. This means that the following must be administered in prison: a) loss of freedom for a duration shorter than three years meted out for felonies listed in Paragraph 42.

section (2) points a) through c); b) loss of freedom meted out to a multiple repeat offender convict for felony, in duration shorter than two years; c) loss of freedom of a definite duration meted out for any other felony. In this latter case the perpetrator may be a person sentenced to loss of freedom for the first time, repeat offender (Paragraph 137. point 12.), or special repeat offender (Paragraph 137. point 13.).

2. Loss of freedom meted out for misdemeanor (Paragraph 11. sec. (2)), the milder form of offense must be administered in prison if the convict is a repeat offender (Paragraph 137. point 12.). The Proposal mentions only the repeat offender in its text, but naturally the loss of freedom meted out for misdemeanor must be administered in prison also if the convict is a special repeat offender or multiple repeat offender. In the latter case only, if the loss of freedom does not have to be administered in penitentiary according to Paragraph 42. section (2) point d).

To Paragraph 44.

Jail is the mildest grade of administering loss of freedom. Jail is the general grade of administering loss of freedom meted out for misdemeanors. According to this the punishment of persons convicted of careless offenses, and further of persons convicted of intentional offenses to be punished not more severely than loss of freedom for two years must be administered in jail.

It is an exception from this latter case if the perpetrator is a repeat

offender. The order's purpose and justification are, on one hand to protect the perpetrators who have gone astray for the first time from the harmful influence of repeat offenders, and on the other hand that the relatively mild administering order of the jail is not suitable to educate those who have already earlier also spent loss of freedom [sic].

To Paragraph 45.

The Proposal makes it a task for the court to determine the grade of administering the loss of freedom. The legal as well as the practical viewpoints are in favor of it that determination of grade should be within the court's legal authority. Based on the trial's material the court knows best the accused's personality, prior record, the nature of the committed offense, that is, those factors which must be taken into consideration when determining the grade. It also follows from this that determination of the grade is done in the case decision meting out the loss of freedom, in the sentence.

Orders of Paragraphs 42. through 44. provide guidance for determining the degree of administration for the loss of freedom. But it is possible that the degree determined on the basis of these orders would be stricter or milder than what the court finds appropriate for achieving the punishment's goal in the given case, taking into consideration the guiding circumstances, particularly the perpetrator's personality and the motivation for his act, when meting out the penalty. Thinking of such cases, the Proposal provides

the courts with the means to deviate from the grade of administration determined in Paragraphs 42. through 44., and to order the punishment's administration in the next stricter or next milder grade.

To Paragraph 46.

The court determines the grade for loss of freedom in the sentence, that is prior to the start of administering the penalty. But the convict's behavior during administration of the penalty may show that the degree determining the sentence is not the degree suitable to achieve the punishment's goal. Therefore the Proposal makes it possible that the court change the degree determining the sentence during the administration of the penalty, and refer the convict into the next milder or next stricter degree. This order insures a significant educational opportunity.

The convict's impeccable behavior is the condition for referral into the milder degree. The convict may be referred into the stricter degree of administration if he repeatedly and severely disturbs the order of administering the penalty. Thus occasionally being undisciplined cannot provide the basis for changing the degree.

The Proposal also takes it into consideration that the behavior of a convict referred into the milder or stricter degree may change during the administration of loss of freedom, and therefore it may be practical to carry out the penalty's remaining balance in the degree determined in the sentence. Therefore it also provides for the possibility that the court suspend the effect

of its later decision concerning placement into the milder or stricter degree. In this case administration of the punishment must be continued in the degree determined in the sentence.

Granting of Conditional Release

To Paragraph 47.

1. The institution of conditional release occupies an outstanding place in the line of criminal pedagogy's tools. The possibility of granting of conditional release provides the incentive for the convict to observe the order of the administration of penalty during the administration of penalty, and by this it helps the work of the organs administering the penalty.

Supervision of the convict on conditional release and the prospect that in the case of committing an additional offense the penalty will have to be continued, are all influencing factors which also assist to educate and resocialize the convict.

On the basis of these considerations and practical experience the Proposal makes it possible for a broad range of convicts to be granted conditional release. It serves the legal institution's effectiveness if the justification for granting conditional release is examined in a circumspect manner in each specific case, and if mechanical evaluation is avoided.

2. The granting of conditional release directly and significantly affects the administration of penalty meted out in the sentence. Therefore the

Proposal refers the decision in this question to the court's legal authority.

Granting of conditional release to the convict may take place if it can be reasonably expected that the punishment's goal can be achieved also without further denial of freedom. This can be reasoned particularly from the fact if during the administration of penalty the convict exhibits impeccable behavior and demonstrates the ability that after his release he will conduct his life in a law abiding manner. In case this general condition exists, the time point for the possibility of granting conditional release conforms to the grade of administration. This grade may be the manner of administration determined on the basis of Paragraphs 42. through 44., or of Paragraph 45. section (2), or Paragraph 46. The Proposal makes it possible to grant conditional release after suffering the time of penalty determined in the various degrees of administering penalty.

3. For specific categories of convicts or penalties the Proposal considers it inherently unjustified or impractical to grant conditional release. Section (3) excludes primarily the multiple repeat offenders and also those from being granted conditional release who have refuted their worthiness by committing an intentional offense after their earlier sentences (points a) and b)). There is no practical sense to a conditional release the duration of which is very brief. Therefore point c) excludes that person from being granted conditional release who has not served at least three months of loss of freedom. Point d) excludes the person sentenced to expulsion from being

granted conditional release. This follows from the fact that the expelled must leave the country after serving his sentence. But due to this it cannot be followed with attention whether the punishment achieved its goal.

4. The Proposal's humanism is expressed in the fact that it does not even exclude the person sentenced to loss of freedom for life from the possibility of being granted conditional release. The hope of this may provide the incentive for the convict to exhibit the proper behavior during the administration of penalty. But it is in harmony with the weight of the penalty that the convict must exhibit impeccable behavior for a long time. Therefore the Proposal makes granting of conditional release possible after serving at least twenty years.

The Proposal also gives orders about that case when the convict sentenced to loss of freedom lasting for life commits an additional offense during the administration of his punishment and is sentenced to loss of freedom because of this. In such cases administration of the loss of freedom for life continues. Paragraph 69, excludes the administration of loss of freedom meted out later; but the additional sentence involves the consequence that the court may postpone the earliest time point when the convict may be granted conditional release by five years at the most. It is unnecessary to determine in law the shortest duration of postponement.

To Paragraph 49.

1. In general the duration of conditional release is identical to the remaining balance of the loss of freedom. But conditional release shorter than one year would not have adequate weight, and would not appropriately serve the purpose of the legal institution. Therefore the Proposal determines the shortest duration of conditional freedom as one year. Order differing from the general is necessary also for the case of conditional release from loss of freedom for life, because in this case the remaining balance of the punishment is of indefinite duration. The Proposal determines this in ten years.

2. Significant consequences are attached to serving a loss of freedom sentence, for example from the viewpoints of being released from the disadvantages tied to having a penal record, and of being a repeat offender. If the convict is granted conditional release and this passes without being penalized again, the punishment must be considered completed on that day when the conditional release expires. The Proposal's text does not even state this self-evident rule. But this would be unfair if the remaining balance of the loss of freedom is shorter than one year because in this way by having been granted conditional release, the release [from consequences] deadline would begin later than if the convict had not been granted conditional release. Section (2) eliminates this contradiction.

3. In case of some persons granted conditional release it is necessary in the interest of protecting society and also of the convict that their fitting into society be aided, and at the same time that they should also be under supervision. Section (3) therefore provides the possibility for placing the person granted conditional release under patronizing supervision. (Paragraph 82. gives orders about the obligations of the convict under supervision). Ordering of supervision is not obligatory but depends on the court's evaluation. Within this attention must be given to the personality of the person being released from loss of freedom, his family circumstances, his ability to fit into society and the objective conditions of fitting in.

The duration of patronizing supervision is identical with the time of conditional release. This duration is necessary in order to assist the convict to fit into society and to prevent relapse. It is expedient also from the practical viewpoint that the patronizing supervision and the condition of release should lapse for the same length of time. Since the conditional release lasts for at least one year, the patronizing supervision cannot be shorter than one year either.

4. Section (4) gives orders about compulsory termination of conditional release and termination depending on the judge's evaluation. The court is required to terminate the conditional release if the convict is sentenced to an administrable loss of freedom for offense committed while on conditional release. That is, such penalty refutes that favorable assumption which was

formed about the convict at the time he was granted conditional release. From this viewpoint it is immaterial whether the offense committed during the conditional release was intentional or careless.

Violation of behavioral rules which accompany patronizing supervision, or commission of such offense for which a penalty other than administrable loss of freedom was meted out, may provide the foundation for terminating the conditional freedom depending on the judge's evaluation. During the evaluation the court must take into consideration the significance and possible repetition of the behavioral rulebreaking, or the weight and character of the additional offense; It must terminate the conditional release if it arrives at the conviction that the punishment's goal cannot be achieved without administering the remaining balance of the loss of freedom, considering these actions.

Violation of the behavioral rules accompanying the patronizing supervision naturally can result in termination of conditional release only if the rule-breaking occurs during the conditional release. If the duration of the patronizing supervision is longer than the conditional release, behavioral rulebreaking committed after the end of conditional release cannot be the foundation for terminating conditional release.

5. If for any reason the court terminates the conditional release, the convict is obligated to serve loss of freedom corresponding to not only the remaining balance of the conditional release but to the entire duration of the conditional release. This is what section (5) states.

Corrective-Educational Labor

To Paragraph 49.

1. The Proposal considers such punishment type to be necessary in our system of penalties which in terms of weight occupies a place between loss of freedom and monetary fine punishment. This type of punishment gives the court the opportunity that in those cases of milder criminality where the joint effect of systematic labor and education is necessary and sufficient to achieve the goal of punishing, it does not have to apply loss of freedom.

2. The corrective-educational labor is primarily an obligation to work. The convict is required to perform work of a specified nature in a place of work designated by the court. It can be applied in the cases of such convicts who have no job or membership in a cooperative at the time of sentencing. Naturally it can be applied also in the cases of persons who have a job or membership in a cooperative, at such times the place of work designated is the convict's place of work existing at the time of the sentence.

This penalty limits the convict's personal freedom only in freely changing his place of work. Therefore the Proposal states that the convict's personal freedom cannot be limited otherwise.

3. Section (2) connects the corrective-educational labor with a property disadvantage determined for the penalty's duration. It is an essential element of corrective-educational labor that the convict receives decreased

wages. The wage must be established on the basis of the wage items in effect, but a portion determined by the court must be subtracted from this to the benefit of the state. The decrease may range from five percent to thirty percent, depending on the court's evaluation. The person sentenced to corrective-educational labor is entitled to all of the benefits which are not considered wages (for example family supplement, travel allowance) in their entirety; decreasing these would not serve the penalty's purpose.

4. Regarding the convict's legal situation during the corrective-educational labor [sentence] the Proposal contains the general order that he is entitled to the rights of working employees, in as much as these are not in contradiction with the penalty's character. Separate statutes determine the details of this.

5. The minimum duration of orrective-educational labor is six months, its maximum duration is two years. In time less than six months the favorable effect of work and of the community of the place of work usually has no effect yet; but if even two years would be insufficient to achieve this favorable effect, this speaks in favor of a need for more severe punishment -- loss of freedom -- to be applied.

But inasmuch as the corrective-educational labor is meted out as agglomerate punishment, it is justified to establish an upper limit of three years, higher than the general limit.

According to Paragraph 92. section (1) more corrective-educational labor [sentences] may be combined into an overall penalty. According to Paragraph 93. section (1) the overall penalty must be meted out in terms of corrective-educational labor. The Proposal establishes three years as upper limit of punishment in this case also.

To Paragraph 50.

1. Performance of the corrective-educational labor cannot be forced by [police] force in case the convict resists it. If the convict extricates himself from performing the punishment, the court will change the unperformed talents of corrective-educational labor to loss of freedom. If the convict severely violates the labor discipline, the consequence is the same. Judging the severity of the discipline violation is the court's task.

From the changeover's viewpoint the remaining balance of corrective-educational labor must be counted from the day when the convict accomplished his behavior giving reason for the changeover. But it is not necessary to declare this in the law's text.

The Proposal specifies the degree of administering the loss of freedom replacing corrective-educational labor to be jail, based on the weight of corrective-educational labor within the penalty system.

2. Corrective-educational labor is a milder penalty than loss of freedom. Therefore section (2) orders that in case of changeover to loss of freedom

two days of corrective-educational labor are equivalent to one day of loss of freedom.

It may happen that the remaining balance of corrective-educational labor does not total six months thus according to the changeover key the amount of loss of freedom replacing it will be shorter than three months. It would be unfair to the convict if the general lower limit for loss of freedom according to Paragraph 40. section (2) would also apply in this case. Therefore the Proposal states that loss of freedom may also be shorter than three months in case of changeover from corrective-educational labor.

Monetary Fine Punishment

To Paragraph 51.

1. The Proposal regulates the institution of monetary fine punishment by introducing the system of daily monetary fines. The basis of this system is that in determining the monetary fine punishment expression must be given on the one hand to the degree of punishment the offense deserves, on the other hand to the perpetrator's financial circumstances. This system is more suitable than the current one that in case of persons committing nearly identical weight offenses but having different incomes it should result in meting out more effective punishments. The daily item system of monetary fine punishment urges the person applying the law to carefully consider the guiding circumstances when meting out the punishment and evaluate them with greater awareness.

2. According to the Proposal the monetary fine punishment must be meted out in the manner that the court establishes the number of daily items as well as the sum corresponding to one daily item. The number of daily items primarily expresses the weight of the offense, while the forint sum corresponding to one daily item conforms to the perpetrator's income and personal conditions.

3. According to section (2) the lower limit of monetary fine punishment is ten, its upper limit is one hundred and eighty daily items, in case of agglomerate penalty two hundred and seventy daily items. The latter is in harmony with the maximum duration of agglomerate penalty determined for loss of freedom and for corrective-educational labor.

When determining the sum of the daily item, the Proposal specifies the lower limit in such a sum that the monetary fine punishment should be applicable even in the case of a perpetrator with the lowest income without its too low level being in contradiction with the penalty's character of legal disadvantage.

The Proposal specifies the maximum sum of one daily item in one thousand forints. This upper limit seems to be adequate even for perpetrators of outstanding income.

When determining the sum of the daily item, consideration must be given on the one hand to the incomes (wages, profit derived from property and other income), and on the other hand to the expenses which maintain the existence, as well as the support, etc. obligations based on statute or decision of authorities. The court proceeds correctly if it takes into consideration the

convicted person's living expenses according to society's average and not in the actual extent possibly exceeding this. The perpetrator's property which does not produce income must be left out of consideration when determining the amount of daily item, because the monetary fine punishment is not of the character of confiscation of property.

To Paragraph 52.

Paragraph 52. contains orders for that case when the convicted person does not pay the monetary fine punishment. In case of non-payment the monetary fine punishment must be changed over to loss of freedom. Changeover is in order if the convicted person does not satisfy his payment obligation. Thus previous attempt enforcement and failure of this are not conditions for changeover. Paragraph 114. section (2) contains an order differing from this with respect to youth.

In changeover the sum of one daily item is replaced by one day's loss of freedom. Even the name daily item itself indicates that the court in the daily item's sum determines a sum corresponding to each day of loss of freedom.

Monetary fine punishment is a milder type of punishment than loss of freedom, therefore the changed-over punishment must always be carried out in jail, the mildest grade of loss of freedom.

If the number of daily items of unpaid monetary fine punishment is less than ninety, it would be unfair if the loss of freedom determined due to the changeover could not be shorter than three months. The Proposal therefore orders that in such a case the loss of freedom can also be shorter than three months, that is, the shortest duration determined in Paragraph 40. section (2).

Prohibition From Participating in Public Affairs

To Paragraph 53.

Prohibition from participating in public affairs is a supplementary punishment of law depriving-law limiting character. There are two conditions for its application: it must be applied against the person who has been sentenced to loss of freedom which is to be administered, and who is unworthy of participating in public affairs.

Prohibition from participating in public affairs can not be applied together with corrective-educational labor and monetary fine punishment. The prohibition from participating in public affairs is a supplementary punishment which strikes the convicted person with significant disadvantage; therefore it is not justified that it should be noted out even with such main penalties which are milder than loss of freedom.

To Paragraph 54.

In this Paragraph the Proposal lists the contentual elements of prohibition from participating in public affairs. Prohibition from participating in public affairs is an integral supplementary punishment, therefore the court cannot deprive the convicted person of only a part of the rights listed.

Among the rights affected by the prohibition from participating in public affairs, the list of section (1) emphasizes the right to vote, one of the most important citizenship rights in first place, and in connection with this -- using the accepted concept of state law -- it speaks of popular representative organs.

According to section (2) point a) the convicted person loses those already existing memberships, jobs, offices, or assignments which he is not eligible to obtain according to section (1). Point b) states the same with respect to military rank and decorations.

To Paragraph 55.

1. The Proposal insures a relatively broad framework for the court in meting out the penalty of prohibition from participating in public affairs: it determines the minimum duration in one year, the maximum duration in ten years. When meting out the supplementary punishment, consideration must be given primarily to the dangerousness of the perpetrator's person to society,

but the prohibition from participating in public affairs must also be in proportion with the extent of loss of freedom.

2. Section (2) gives orders about calculating the duration of prohibition from participating in public affairs. The duration of prohibition from participating in public affairs must be counted from the time the sentence specifying it becomes legally final. But the Proposal makes exceptions from this rule. The time the convict spends in loss of freedom (Paragraph 41. sec. (3)) or while he is in restrictive confinement (Paragraph 81. sec. (1)) cannot be counted towards the duration of prohibition from participating in public affairs. That time during which the convicted person extricates himself from the administration of the main penalty or from restrictive confinement, must also be excluded from the duration of the prohibition from participating in public affairs.

The Proposal insures fair consideration by stating that time spent on conditional release or on temporary release from restrictive confinement must be counted towards the duration of prohibition from participating in public affairs if the conditional release was not terminated, or if the temporary release became permanent.

Prohibition From Practicing an Occupation

To Paragraph 56.

The prohibition from practicing an occupation is a supplementary punishment

limiting the convicted person's rights; it relates to that occupation within the sphere of which he accomplished the offense. It can be applied against a person who became perpetrator of an offense by violating the rules of an occupation requiring professional training or by intentional [ab]use of the occupation.

This supplementary punishment serves society's protection by depriving the perpetrator of the possibility of committing an additional offense by practicing his occupation.

To Paragraph 57.

1. According to the Proposal the prohibition from practicing an occupation is of permanent effect, or lasts for a definite length of time — from one year to ten years. The condition for prohibition of permanent effect is that the perpetrator has become proven unsuitable to practice the occupation. Usually the unsuitability can be established for health reasons, for example such person commits endangerment in the area of the occupation who uses narcotics and violation of the rules of his occupation was connected to this habit.

Application of a definite type or extent of main punishment is not a condition for prohibiting the practice of an occupation. The court may use it not only with loss of freedom but also with corrective-educational labor or monetary fine punishment. It is also not an obstruction to meting it out if administration of the main penalty is suspended.

2. Regarding calculation of the duration of prohibition from an occupation, section (2) appropriately orders that the order of Paragraph 55. section (2) concerning the duration of prohibition from participating in public affairs be applied. Sameness of the regulation is justified by the fact that from the viewpoint of the durations of prohibition these two supplementary punishments are close to each other.

3. In case of prohibition from practicing an occupation lasting for a definite length of time it may endanger society's interests if after serving the supplementary punishment the convicted person may again practice his occupation. Therefore the Proposal gives the court the opportunity to make the practice of the occupation again dependent on proving the know-how necessary to do so. After the prohibition's duration this may be in order in a specified manner -- for example by taking an examination. -- In case of prohibition of permanent effect the Proposal also provides the opportunity for the prohibited person to practice his occupation again. The regulation takes into consideration the viewpoint of society's protection as well as fairness to the prohibited person. It authorizes the court to grant relief later to the prohibited person, but this may take place only if ten years have passed since the prohibition and if the prohibited person proves that he is suitable to practice the occupation, for example his health related unsuitability has ended.

Prohibition From Driving Vehicles

To Paragraph 58.

1. The prohibition from driving vehicles limits that right of the convicted person to drive a vehicle.

The supplementary punishment primarily can be applied against that person who has committed an offense by violating the rules of driving vehicles tied to permit. Application of supplementary punishment is not mandatory in this case either, but depends on the court's evaluation. To make it mandatory could mean unjustifiable legal disadvantage to those who commit traffic offenses, and would also hinder the meting out of individualized punishments. When evaluating it, the court must examine first of all whether the perpetrator's participation in traffic represented danger to public safety.

The person who uses a vehicle in the commission of an offense may also be prohibited to drive vehicles. In recent years a dangerous form of criminal activity has developed, the so-called moving crime [different from moving violation. Translator.] . The characteristics of this are that a series of offenses is committed using the motor vehicle, since the motor vehicle makes the commission of the offense and escape from the scene much easier. In such cases the prohibition from driving vehicles also serves to prevent additional offenses.

The Proposal, by means of referring to the fact that the driving of vehicles is tied to permit rather than listing the vehicles to be considered from the viewpoint of prohibition, takes it into consideration that the circle of those vehicles tied to operating permit may change. Currently order No 1/1976.

(I. 10.)^{BM} Paragraph 2. section (1) lists with what driver's permit or license may vehicles be driven in traffic on the public roads. Driving of certain non-public-road -- aerial, waterway, railroad, etc. -- vehicles is also tied to permit. The court cannot prohibit the driving of such vehicles the driving of which the statute does not tie to permit; such is for example the bicycle.

2. The court may prohibit the perpetrator from driving all vehicles tied to permit, but may also limit the prohibition for definite types of vehicles. Section (2) provides the possibility for this. The justification for this is that in certain cases the perpetrator represents danger to public safety only by driving certain vehicles. In case of applying section (2) the court may specify the prohibition to apply to railroad, aerial, public road etc. vehicles, and within public road vehicles to those vehicle categories which are listed in order No 1/1976. (I. 10.)^{BM} [Ministry of Interior].

To Paragraph 59.

1. Paragraph 59. gives orders about the duration of prohibition to drive vehicles. The prohibition may be of permanent effect or may last for a specific length of time. The condition for permanent prohibition is the perpetrator's unsuitability to drive vehicles. This must be understood to

mean unsuitability for participating in public road traffic. (Order No 1/1976. (I. 16.)Eu v [Ministry of Health] is the statute concerning the health related suitability of motor vehicle drivers.)

The Proposal defines the minimum duration of prohibition for a specific duration in one year, its maximum duration in ten years. This regulation containing such wide time limits gives ample opportunity for the differentiated application of supplementary punishment.

2. Section (2) does not regulate independently the calculation of the duration of prohibition from driving vehicles, but — due to the similarity between the characters of the two supplementary punishments — prescribes appropriate application of the regulation concerning the calculation of the duration of prohibition from participating in public affairs (Paragraph 55. sec. (2)). — In case of prohibition of definite duration from driving vehicles it is just as justified to provide the opportunity to be released by the court from the prohibition, making the authorization to drive vehicles again dependent on proving one's know-how, and in case of permanent prohibition to be released from that prohibition, as it is in the area of prohibition from practicing an occupation. The Proposal regulates this by ordering that the orders of Paragraph 57. section (3) concerning prohibition from an occupation be appropriately applied. Appropriate application in the area of driving vehicles means that the prohibited person prove his know-how or suitability necessary to drive vehicles in the manner determined for it.

Banishment

To Paragraph 60.

1. Banishment is a supplementary punishment limiting the right of freely choosing the location of one's presence. The person sentenced to this loses his right to be present in areas determined by the court.

There are three conditions for banishment: that the Proposal's Special Part make banishment for the given offense possible, that the court mete out loss of freedom as the main penalty, and that the perpetrator's presence in the given location endanger the public interest.

Orders of the Special Part make banishment possible for those offenses in which — according to criminalological and crime fighting experience — the fact that the perpetrator was in a certain place made it easier for him to commit the offense, and in order to prevent commission of the offense it is necessary to remove the perpetrator from his prior location of stay. Such are for example indolence as public danger, or organizing prohibited games of chance. — Suspension of the administration of loss of freedom is not an obstacle to banishment, because that effect of the supplementary punishment serving primarily the individual prevention may be effective in this case also.

The Proposal does not make it obligatory to apply banishment. The court must evaluate whether the perpetrator's presence in a definite area endangers the public interest.

Banishment may involve one or more localities, or a specific part of the country (for example Budapest, Pest megye or the megyes along the [Lake] Balaton), depending on that the perpetrator's presence in which areas endangers the public interest.

2. According to section (2) the banishment may range from one year to five years. A time period of shorter than one year does not appear to be suitable to achieve the supplementary punishment's goal. But banishment exceeding five years is unnecessary because in general five years are sufficient for the perpetrator's connections endangering the public interest in the locale of the banishment to break up, and for him to fit into society elsewhere.

In calculating the duration of banishment the regulations concerning prohibition from participating in public affairs must be appropriately applied. This rule is justified by the similarity between the two supplementary punishments.

Expulsion

To Paragraph 61.

Expulsion is a supplementary punishment limiting the convicted person's rights. It can be applied only against those who are not Hungarian citizens, that is besides the foreign citizens it also extends over people without citizenship.

The expelled person is required to leave the country or to suffer being

removed from the territory of the Hungarian People's Republic. Once the convicted person left the country's territory, he may return there only by special permission (for example a visa). Returning without permission is an offense (Paragraph 214.).

The Proposal does not restrict the application of expulsion to specific offenses, therefore it can be applied for any offense if the court arrives at the conviction that the perpetrator's presence in the country is not desirable. — The person against whom expulsion has been applied cannot be granted conditional release (Paragraph 47. sec. (3) point d)).

Confiscation of Property

To Paragraph 62.

Confiscation of property subjects the perpetrator of an offense to property disadvantage, taking away all of his property or specified property items. In the Proposal's penalty system confiscation of property is a severe supplementary punishment, therefore it is justified to limit its application to an area narrower than the application of monetary fine punishments.

The general condition to apply confiscation of property is that the perpetrator should have adequate property. In the case of a person without property the supplementary punishment would be symbolic, its execution would lead to no result and this would not only place unnecessary burden on the authorities

responsible for carrying it out but would also damage respect for the sentence. Therefore with respect to this supplementary punishment adequate is that property the confiscation of which does not endanger the existence of the perpetrator and of his relation entitled to support. Usually this is identical to property not exempt from court enforcements.

Even against a perpetrator who has adequate property, confiscation of property is in order only when the Proposal's Special Part makes this possible for the given offense, or if the offense was committed for the purpose of obtaining profit. By intent to obtain profit the effort to obtain property advantage must be understood; this condition cannot be limited to offenses against property, but it occurs in general in those offenses which are committed in the interest of profiting in property.

In case these conditions exist, the Proposal gives orders about applying confiscation of property which is mandatory and depends on the court's evaluation. — Penalties more severe than loss of freedom for three years are meted out in the cases of such offenses — taking into consideration the Proposal's penalty system and the penalty items — , the objective weight of which or the dangerousness of the perpetrator of which is significant. At such time the penalty's goal calls for application of confiscation of property. But inasmuch as the main penalty is no more severe than loss of freedom for three years which is to be administered, it is not justified to make confiscation of property mandatory, but the court must evaluate whether this is

necessary in the interest of the penalty's goal. The Proposal does not make confiscation of property possible with loss of freedom suspended, corrective-educational labor, and monetary fine penalty [sentences]. Confiscation of property is not in proportion with the weight of loss of freedom suspended; and corrective-educational labor and monetary fine punishment involve material disadvantages and besides them additional supplementary punishments of material character would be unjustified.

To Paragraph 63.

1. The Proposal makes it possible even in the case of mandatory application of confiscation of property for the court to farreachingly individualize the determination of supplementary punishment, to take into consideration besides the weight of the offense and the extent of the primary penalty also the perpetrator's personal and property circumstances, family conditions, and whether this penalty might also disadvantageously effect the perpetrator's relations. Therefore section (1) orders that confiscation of property may be ordered to involve all of the perpetrator's possessions or specific property items.

2. Section (2) wishes to provide insurance against legal manipulations aimed at circumventing the confiscation of property. In general the basis for confiscation of property is the perpetrator's property existing at the time the offense is judged. But the Proposal provides the possibility for the

court to specify confiscation of property also for items of property transferred to others for the purpose of frustrating the confiscation of property, assuming that the person acquiring the property item had knowledge of the transfers purpose. From this viewpoint the time point of transfer is immaterial -- confiscation of property may be specified for those property items also which the perpetrator gave away free after committing the offense, even if the transfer's purpose was not frustration of the confiscation of property or if the person acquiring it free did not know about this purpose of the transfer.

3. Section (3) gives orders about the consequences of confiscation of property. According to this the confiscated property becomes property of the state. This means that the state obtains the rights of ownership of property confiscated and in the perpetrator's possession. All this occurs when the sentence becomes legally final, and not at the time steps are taken to carry out the confiscation of property.

The Proposal gives no orders about the state's responsibility in confiscation of property cases, since this is regulated by the civil law (Ptk. Paragraph 120. secs. (2) and (3)).

Supplementary Monetary Fine Punishment

To Paragraph 64.

1. The purpose of supplementary monetary fine punishment is to subject the

perpetrator to property disadvantage. Therefore its application is justified only when the perpetrator has appropriate income, earnings, or property. In absence of this condition, meting out supplementary fine punishment — due to the changeover — would directly mean the application of loss of freedom.

Supplementary monetary fine punishment may be used only with loss of freedom of definite duration. In cases of the death penalty and loss of freedom lasting for life the punishment's goal does not justify supplementary monetary fine punishment. Also, corrective-educational labor already by itself involves financial disadvantages. — Supplementary monetary fine punishment may be used with loss of freedom lasting for a definite period of time also if the court suspends the administration of the main penalty. Supplementary monetary fine punishment which is to be carried out serves the penalty's purpose efficiently also in this case.

In case the above general conditions exist, application of supplementary monetary fine punishment is mandatory if the offense was committed for the purpose of obtaining profit. Not only those offenses must be understood by offense committed for the purpose of obtaining profit in which this aim is an element of the fact situation, but any offense the purpose of which is to obtain a material advantage.

Besides these the Proposal also provides the possibility to mete out supplementary monetary fine punishment for committing any offense if this

contributes to holding the perpetrator back more efficiently from additional offenses. But at such times its use is not mandatory but depends on the court's evaluation.

2. The extent of the supplementary monetary fine punishment must also conform to the perpetrator's income and personal conditions, and naturally the weight of the offense also cannot be left out of consideration. But evaluation of these factors cannot be done the same way as application of monetary fine punishment as main penalty. That is, for the supplementary monetary fine punishment attention must also be given to the main penalty and to those unique viewpoints which are the conditions for applying this supplementary penalty. From this follows that in meting out the supplementary monetary fine punishment the system of daily money penalties as regulated in Paragraph 51. would not be practical. Therefore the Proposal determines the lower and upper limits of supplementary monetary fine punishment in terms of specific sums of money, not by starting out from daily items. The lower limit is identical to the minimum amount of monetary punishment which can be meted out according to Paragraph 51. section (2), but in determining the maximum amount it had to be kept in mind that supplementary monetary fine punishment over 100,000 forints would be a legal disadvantage of the nature of confiscation of property, thus it is not justified to provide the opportunity for this.

3. Both the supplementary monetary fine punishment as well as the confiscation of property subject the perpetrator to material disadvantage, therefore

applying them together is not warranted. Confiscation of property is the more severe punishment, therefore section (3) excludes the use of supplementary monetary fine punishment in case of confiscation of property.

To Paragraph 65.

1. The Proposal determines the conditions of changing supplementary monetary fine punishment to loss of freedom the same way as in monetary fine punishment, in nonpayment. But deviation from Paragraph 52. is justified with respect to the degree of administering loss of freedom derived from the changeover. Since the supplementary monetary fine punishment is meted out together with loss of freedom, it would be theoretically improper and would also cause practical difficulties if the changed-over punishment would be administered in jail even when the degree of carrying out the main penalty is penitentiary or prison. Therefore the Proposal orders that the degree for carrying out the changed-over loss of freedom is jail, but inasmuch as the main penalty must also be carried out, the degree of this provides guidance also for the changed-over punishment.

2. From the system of meting out the supplementary monetary fine punishment follows that in case of changeover one day's loss of freedom must be counted instead of a determined sum of supplementary monetary fine punishment. Section (2) determines the forint sum corresponding to one day's loss of freedom in at least 100 and at the most 500 forints, within these limits the court will

determine according to what key the changeover shall be done in the given case.

-- The minimum duration for loss of freedom replacing supplementary monetary fine punishment is one day, that is, applying the general minimum of three months for loss of freedom would represent unjustifiably severe disadvantage. And loss of freedom when determined due to changeover cannot exceed six months even if loss of freedom longer than this should be determined by using the key for the changeover as regulated by law. That is, loss of freedom exceeding six months would be disproportionately severe punishment compared to no matter how high a supplementary monetary fine punishment.

Reasons Excluding the Administration of Punishment

To Paragraph 66.

Reasons which exclude the administration of punishment are circumstances which occur after the sentence is issued which specifies the punishment.

Death of the convicted person after the sentence is made naturally excludes administration of the penalty or of its unadministered portion. But execution of the confiscation of property is in order in such case also, because according to Paragraph 63. section (3) the confiscated property becomes property of the state when the sentence becomes legally final.

The Proposal attributes such effect to the passing of time which may exclude the administration of penalty. Paragraphs 67. and 68. contain the orders concerning lapse.

Clemency also excludes administration of the punishment. The right of clemency is exercised by the Presidential Council of the Hungarian People's Republic (Constitution Paragraph 30. sec. (1) point j)). Difference must be made also from the viewpoint of clemency which excludes the administration of penalty between general clemency [amnesty] and individual clemency. The exercising of general clemency is accomplished in the form of statute and usually affects a broader circle of convicted persons.

Administration of penalty may be excluded also by reasons itemized listing of which is avoided in the Proposal due to practical considerations. Reference to other reasons defined by law means that only the law or statute issued on the basis of authorization by the law may define such a circumstance due to which the penalty meted out cannot be carried out. Paragraph 63. contains a regulation of such character (exclusion of the administration of penalty in case of loss of freedom for life). It is also a reason which excludes execution if the court suspended execution of the penalty for probationary time, and the probationary time has passed successfully (Paragraph 89.).

Lapse of Punishment

To Paragraph 67.

1. In case of the punishment's lapse the administrability of penalty meted out by a legally final sentence ceases due to the passing of time. The reason for this is fairness, and also the fact that the dangerousness of the

perpetrator's person to society decreases with the passing of time. — From the character of the legal institution follows that the deadline for the lapse must be determined by using the penalty meted out by the court as foundation.

Section (1) regulates the deadline for lapse of main punishments. The shortest time for lapse of punishability is three years (Paragraph 33. sec. (1) point b)), but this would be too low in case of loss of freedom meted out in a legally final matter. Therefore the Proposal determines the deadline for lapse of punishment in a minimum of five years in case of loss of freedom, and in three years for corrective-educational labor and monetary fine punishment.

2. Making a difference between monetary fine punishments meted out as main penalty and as supplementary penalty is not warranted from the viewpoint of lapse in carrying it out. Therefore section (2) determines the time of lapse for supplementary monetary fine punishment in the same deadline as the duration of monetary fine punishment.

The Proposal provides no possibility for lapse of other supplementary punishments. On the one hand the character of these supplementary punishments is such that lapse would not be justified in the interest of society's protection, on the other hand the conditions serving as foundation for lapse of main punishments received lesser consideration for supplementary punishments.

3. Section (3) represents an exception from the general rules of lapse, as it excludes the lapse of penalties of loss of freedom for fifteen years or more severe than this meted out for war crimes, and for any penalty meted out for other crimes against humanity defined in Chapter XI. This order serves the execution of the international pact adopted about the exclusion of war crimes and crimes against humanity from the statute of limitations, as published by legal decree No 1. of the year 1971.

To Paragraph 68.

1. Section (1) regulates the calculation of deadlines for lapse of main punishments. The general rule is that time begins to run towards the deadline on the day the decision meting out the penalty becomes final. The case when the punishment's execution is suspended is exception from this. To wit, in case the general rule were valid, the time of lapse would run during the probationary time also and it could happen that even though administration of the suspended penalty has to be ordered (Paragraph 91.), lapse having occurred would hinder administration of the punishment. The order whereby the deadline for lapse begins to run on the day the probationary time runs out for the suspended main punishment, eliminates this. — Special rule is needed also for that case when the convicted person escapes during the execution of loss of freedom. It would represent an unjustified advantage to him if in such case the deadline for lapse would be calculated from the time the sentence became legally final. Therefore the Proposal orders that the time for lapse begins over again with the day of the escape.

2. Regulation which makes it possible for supplementary monetary fine punishment to lapse during the execution or time of lapse of the main penalty is not practical primarily because of the shorter deadline for lapse of the supplementary monetary fine punishment. Therefore section (2) orders that time for lapse of the supplementary monetary fine punishment begins when the main penalty has been completed, or its administrability ended.

3. Interruption of the time of lapse delays the lapse of penalty. The lapse is interrupted by measures taken by the appropriate authority in the interest of carrying out the punishment. Such measures are for example searching for the place where the convicted person is when he is in an unknown location, or issuance of order to apprehend (Be. Paragraph 397. sec. (2)). Measures of exclusively administrative character taken by the court do not affect lapse. -- The legal effect of interruption consists of the time passed until the day the measure is taken in the interest of carrying out the punishment, being left out of consideration, and the deadline for the lapse starting again from the beginning.

4. Section (4) contains the special rule for interrupting the time of lapse in that case when the court has also meted out supplementary monetary fine punishment. The Proposal keeps practicality in mind when it assigns an effect interrupting the lapses of both punishments to a measure taken for the purpose of carrying out either the main penalty or the supplementary fine punishment. -- The other supplementary punishments do not lapse, therefore

measures taken towards the execution of these also do not influence the lapse of the main penalty.

Exclusion of Administration of Penalty in the Case of Loss of Freedom for Life To Paragraph 60.

Paragraph 60. regulates a reason of administration which belongs within the circle of "other reasons as defined in law" mentioned in Paragraph 66. point d). It would not be compatible with the concept of loss of freedom for life if either loss of freedom of a definite duration or corrective-educational labor meted out by another sentence were carried out on the convicted person either by interrupting the implementation of loss of freedom for life, or subsequently his being placed on conditional release from this. Therefore the Proposal declares that loss of freedom for a determined length of time or corrective-educational labor cannot be executed on the person who has been sentenced to loss of freedom for life. (Paragraph 47. section (4) gives orders about postponing the earliest time point of being placed on conditional release in the case of committing an additional offense during the penalty's execution.)

Title II.

The Measures

Besides the penalties, the other group of penal law consequences of an offense

is composed of measures. The joint task of penalties and measures is society's protection. But different tools are used in the effort to achieve this.

Types of Measures

To Paragraph 70.

1. Section (1) lists the measures applicable against all perpetrators.

Being in a correctional institution, regarding which Paragraph 118. gives orders, is a measure which can be ordered only against people of young age.

2. Measures are used independently instead of penalties, or together with penalty or [other] measure. Measures can be used independently if the perpetrator is not punishable, yet in the interest of society's protection the application of a measure is necessary, or when even though the perpetrator is punishable, the measure used instead of a penalty also appropriately insures society's protection. — Measures applicable only independently, instead of punishment are the reprimand, placement on probation, and forced medical treatment, while forced medical treatment of alcoholics can be ordered independently (Paragraph 76.) and also together with punishment (Paragraph 75.). Confiscation of property can be used either independently or together with penalty or measure. — Ordering restrictive confinement is in order only together with a penalty, while ordering patronizing supervision is in order together with either a penalty or a measure.

The Reprimand

To Paragraph 71.

1. Reprimand is a measure of educational character. It means moral condemnation of the offense's perpetrator, without material disadvantage in law. Its most important purpose is to educate the perpetrator to a behavior which respects the law. Its name also expresses this character of the measure.

Section (1) regulates the mandatory cases of applying reprimand, and section (2) regulates those cases which depend on the authorities' evaluation.

The person who accomplishes the legal fact situation of offense must be given reprimand if he is not punishable considering the low degree of dangerousness of his act to society (Paragraph 28.), or if his punishability has ended due to its dangerousness to society becoming minimal (Paragraph 36. second part). In these cases even the most lenient punishment applicable according to the law is unnecessary. But since the perpetrator accomplished the fact situation of an offense, a reprimand expressing moral condemnation and warning is justified in the interest of keeping him back from committing additional offenses.

But if he is not punishable because the dangerousness of his act to society has ceased (Paragraph 36. first part), it is not necessary to make the reprimand mandatory and must be made dependent on the authority's evaluation

whether in the given case they consider application of a reprimand justified.

Those other reasons defined in the law which terminate punishability (Paragraph 32. point e)) vary in character. Thus because of this it would not be proper to make the issuance of reprimand to the perpetrator mandatory in all cases. However there are cases when application of reprimand is justified because of the committed but not punishable offense and in order to prevent the commission of additional offenses. Therefore the Proposal in this area also provides the opportunity for reprimand depending on the authorities' evaluation.

2. The reprimand's content is partly disapproval, that is, expression that the authorities consider the perpetrator's deed to be harmful and points out his personal responsibility, and partly the authorities' call upon the perpetrator to restrain himself in the future from committing offenses.

The foundation for issuing reprimand is that the perpetrator committed an offense, that is, establishment of penal law responsibility is a precondition of reprimand. In general this is within the court's jurisdiction. But in the interest of the effectiveness of the penal process it is justified that reprimands should be able to be issued not only by the court but also -- in connection with terminating the investigation -- by the investigating authority and by the prosecutor. This is why section (3) gives orders about the authorities in general. All authorities proceeding in penal matters must be understood to be included in this.

Placement on Probation

To Paragraph 72.

1. The purpose of placement on probation does not differ from that of punishment. But this is served by the threat of disadvantage, not by causing direct disadvantage; also in given cases by making the avoidance of disadvantage conditioned on observing certain behavioral rules. That is, the granting of probation is that variation of conditional sentencing when even though the court establishes the perpetrator's penal law responsibility but it does not mete out a penalty; rather it postpones the meting out of penalty for the probationary time.

There are two conditions for placement on probation. It may be applied only if the penalty which can be meted out according to the Special Part for the offense committed by the perpetrator is not more severe than two years' loss of freedom. That is, the abstract weight of offenses threatened by penalty exceeding this is of such degree that the possibility of placement on probation would not serve society's protection.

A further condition for placement on probation is that it should be reasonably expectable in the given case: the punishment's goal can be achieved also by using this measure.

From the measure's character follows that only the court may use it.

2. Placement on probation cannot be considered an adequate tool of penal law if the perpetrator is a repeat offender (Paragraph 137. point 12.). Therefore section (2) excludes repeat offenders from being placed on probation.

3. Section (3) determines the shortest and longest durations of probationary time. Probationary time of shorter than one year is not sufficient to prove that commission of the offense was an occasional behavior strange to the perpetrator's way of life, while probationary time beyond three years would represent disproportionately severe legal consequences, and would not be in harmony with the purpose of the punishment possibly meted out either. -- Within these limits the court determines the length of probationary time in years. This provides the opportunity to individualize.

4. It may promote the goal of placement on probation if it is coupled with behavior rules and with supervision to observe these. This is served by placing the person on probation under patronizing supervision. But it would not be practical to make this mandatory; there are cases where it is unnecessary to place the person under patronizing supervision (for example for those who commit careless offenses). Thus the Proposal merely provides the opportunity for ordering patronizing supervision. The court applies this when it feels it to be necessary in the interest of preventing the commission of additional offenses. The court may conclude this primarily from the perpetrator's personality and lifestyle until now.

To Paragraph 73.

1. Section (1) provides the opportunity for the court to extend the probationary time determined when the person was placed on probation. This is in order only against those whom the court placed under patronizing supervision and who violate the behavioral rules associated with that. Extension may take place on one occasion and its duration may be one year at the most. Thus in such a case the total duration of probationary time may exceed the three years written in Paragraph 72. section (3). If the behavior rules are violated, the court must carefully evaluate whether the weight of the violation justifies extension of the probationary time. That is, in case of a rulebreaking of minor significance extension of the probationary time would be a disproportionate disadvantage.

2. If the person placed on probation demonstrates by his behavior during the probationary time that the measure did not reach its goal, the probation must be terminated and penalty meted out. There may be two reasons for this: the person placed on probation severely violates the behavioral rules involved in patronizing supervision, or he is sentenced for an offense committed during the probationary time.

Thus the former reason for termination may occur only for the person placed under patronizing supervision. The court decides whether violation of the behavioral rules was severe. (If the rulebreaking is not severe, extension of the probationary time is in order based on section (1)).

Probation must be terminated if the person placed on probation commits an offense during the probationary time and is sentenced for it. The Proposal does not give the court the opportunity to evaluate, because no milder consequence can be tied to being sentenced for the additional offense than to severe violation of the behavioral rules which accomplishes no offense. It may happen that an offense committed during the probationary time is judged only after the probationary time has expired. The sentence given then also demonstrates the probation's lack of success, thus a penalty must be meted out also for committing the offense which provided the basis for being placed on probation.

3. The consequence of successfully completing the probationary time is that the perpetrator's punishability ends. This is among those reasons for terminating punishability which Paragraph 32. point e) mentions under the collective name of other reasons determined by law.

Mandatory Medical Treatment

To Paragraph 74.

1. Forced medical treatment, the purpose of which is curing and society's protection is a measure applicable against persons not punishable due to abnormal mental conditions.

Section (1) determines the conditions of applying it. Forced medical treatment

may be ordered for the person who is not punishable due to the ill condition of his mind's operation. This refers to all eventualities of Paragraph 24. section (1), and is not limited to only those who are mentally ill.

An additional condition is that the perpetrator accomplished a punishable act of violence against the person or causing public danger. Violent acts against the person are the attack, taking of a human life, taking of a human life committed while greatly agitated, bodily harm, violence against an official person and one performing public service, as well as against a superior, forced sexual intercourse, violence against modesty, violent unnatural sexual acts, rowdiness, and robbery. Acts causing danger to the public are primarily the public endangerment (Paragraph 259.), but depending on the given fact situation other behavior may also be included in this. According to practical experience these are the most dangerous ones among the acts of persons of ill mental conditions, therefore it is justified to limit the possibility of applying forced medical treatment to these. — It must be determined on the basis of objective criteria, what offense the act would be classified under if the perpetrator were punishable.

The subjective and objective conditions mentioned provide the foundation for forced medical treatment only if one must fear that the perpetrator will commit a similar act. If the danger of repetition is missing, society's protection does not demand this measure.

A further condition for mandatory medical treatment is that in case of the perpetrator's punishability, a penalty more severe than one year's loss of freedom would have to be meted out to him. This condition excludes the ordering of mandatory medical treatment for acts of minor significance. When examining this condition, the court must apply the principles written in Paragraph 33., with the difference that the perpetrator's dangerousness to society and guilt must be left out of consideration. Thus the assumed penalty must be determined exclusively on the basis of the act's objective criteria.

Paragraph 33. of law No II. of the year 1972 concerning health care prescribes mandatory medical treatment or care for the mentally ill. Therefore if the conditions for ordering mandatory medical treatment are missing but the perpetrator needs medical treatment or care due to his ill mental condition, the court must notify the appropriate health care organ. The purpose of the notification is that the health care organ should be informed of the need of the perpetrator's treatment.

2. The Proposal recognizes only one form of forced medical treatment, to carry it out in a closed institution designated for this purpose. Section (1) defines the area of forced medical treatment in such a way that the measure should be in order only against those for whom society's protection makes treatment in a closed institution necessary. And carrying it out in a designated institution insures that the institution's order be in harmony with the unique task of mandatory medical treatment.

The Proposal does not make it possible to carry out the forced medical treatment outside of the designated closed institution, in the mental ward of a hospital, in an institution caring for nervous disorders or in other similar matters. If it is necessary to treat the perpetrator of ill mental condition in such matter, this can be accomplished also within the framework of special health care management, without penal law measures.

3. Forced medical treatment is a measure of indeterminate duration which must be continued as long as necessary. The court must end the forced medical treatment if its necessity no longer exists. The need for it ends if it needs be feared no longer that the medically treated person will again commit such a punishable act for which mandatory medical treatment is in order.

Compulsory Medical Treatment of Alcoholics

To Paragraph 75.

There is close relationship between alcoholism and criminal activity. Therefore the Proposal takes care to develop effective penal law tools to overcome alcoholism. In the interest of this it introduces a new measure by the name of compulsory medical treatment of alcoholics, which insures medical treatment for alcoholics committing offenses, and does so in two forms.

The forced treatment regulated in Paragraph 75. is not an independent measure but is connected to the execution of loss of freedom. It can be ordered

against those whose offense is related to their alcoholic lifestyle. This definition of the personal area is based on the practical experience that primarily the so-called narcomanic [sic] alcoholics require medical treatment. Occasional — though excessive — consumption of alcohol thus cannot establish the foundation of this measure.

A further condition of the order is that the alcoholic be sentenced to administered loss of freedom exceeding six months. Forced medical treatment can take place only during the loss of freedom, in an institution for administering punishment. The duration of loss of freedom exceeding six months insures that sufficient time be available for the medical treatment.

If the court does not apply loss of freedom exceeding six months or an independent measure according to Paragraph 76., there is no need for penal law measure in the interest of medical treatment.

Instead of this, if commission of the offense was connected with alcoholic way of life, the court must inform the appropriate health care organ. Paragraph 35. of law No II. of the year 1972, and Paragraphs 66. through 70. of order No 15/1972. (VII. 5.)Eu M give orders concerning the care and medical treatment of alcoholics.

To Paragraph 76.

The form of forced medical treatment regulated in Paragraph 76. is treatment

in a work therapy institution. This is an independent measure which is used by the courts without meting out penalty. It is similar in content to compulsory institutionalized medical treatment introduced by legal decree No 10. of the year 1974.

In harmony with the compulsory medical treatment of Paragraph 75., this independent measure also is in order only against those perpetrators whose offenses are related to their alcoholic way of life; thus it cannot be ordered against the occasional drinker. Further it is necessary for the conditions of institutionalized medical treatment to exist. By this it must be understood that those conditions provide guidance for interpretation under which compulsory institutionalized medical treatment can be ordered according to legal decree No 10. of the year 1974.

Treatment in a work therapy institution is a milder legal consequence than loss of freedom. Therefore it can be applied only instead of loss of freedom not exceeding six months, or penalty milder than this — corrective-educational labor, monetary fine punishment. Thus the court must examine before requiring treatment in a work therapy institution — taking into consideration the principles defined in Paragraph 83. — what penalty it would mete out in the specific case, and independent measures may be taken only if it arrives at the conclusion that even otherwise it would not mete out more severe penalty than loss of freedom for six months.

Work therapy treatment ordered as independent measure is executed by taking

the rules of compulsory institutionalized medical treatment for foundation, regulated by law decree No 10. of the year 1974. From this follows that the institutionalized treatment may last for a minimum of one year and maximum two years. The Proposal also gives orders about the latter.

Confiscation

To Paragraph 77.

1. The legal nature of confiscation is contradictory. In some respects its character as penalty, in others as measure is emphasized. Holding someone back from committing additional offenses by applying a legal disadvantage is not its primary goal, but in practice it often means a severe disadvantage to the perpetrator. Since confiscation can be applied even when the perpetrator is not punishable, regulation as a measure is justified.

2. Section (1) lists those general conditions under which confiscation is in order.

The motivation for confiscating the object used as tool in committing the offense is that this object as demonstrated by the offense committed is dangerous to society. — Confiscation of the item with which the offense was intended to be committed means that confiscation is in order also when the item was intended to be a tool for the offense, in its attempt or preparation stage. But confiscation connected to preparation of an offense can be ordered only when preparation of the given offense is subject to punishment.

An item used or intended as a tool to commit an offense can be confiscated in general only if the perpetrator owns it. Otherwise this can be done only if having the item in one's possession endangers the public's safety.

Based on section (1) point b) that item must be confiscated which came into existence directly through the commission of the offense. Such item is for example the false banknote in money forgery. An item which came into existence through committing an offense must be differentiated from that item with respect to which the offense was committed. (Section (3) gives orders about the latter.)

The item which the perpetrator of the offense received from its owner or from another with his consent for committing it is justified to be confiscated because it would be contrary to our moral concepts if the prize for the offense would remain with the perpetrator; this cannot be returned to the owner either, because he abused it to the detriment of society. Based on this order, that item which has replaced the item received for committing the offense cannot be confiscated, for example the item purchased for money received.

Confiscation of that press product in which the offense (for example agitation, slander) was carried out, is justified in the interest of protecting society or the injured person's personal rights. But there would be no possibility of this based on the general rules of section (1), therefore section (2) makes this obligatory by a separate order.

3. The character of certain offenses makes it necessary to confiscate also that item with respect to which the offense was committed, or which was the object of the given property advantage. Section (3) orders that in cases defined by law the confiscation must be declared on such basis; by this it refers to the orders of the Special Part. Such order is contained in Paragraph 258. for offenses against the purity of public life, Paragraph 286. for abuses involving explosive material, blasting material, firearms or ammunition, radioactive material, poison, harmful public consumption item and narcotics, Paragraph 314. for violation of economic operating responsibility, speculation, price increase, endangerment of public supply, violation of foreign currency management, abuse of production tax, smuggling and receipt of goods on which customs duty has not been paid.

4. It can happen that the item which must be confiscated no longer exists when the penal process is conducted (became destroyed, its ownership right has been transferred to someone else, etc.). It is justified to insure that the goal of confiscation should be realized. This is served by requiring the perpetrator to pay the item's value. In the case defined by section (1) point b) application of this depends on the court's evaluation. Section (1) point c) and section (3) regulate those cases of confiscation the character of which justify the requirement to pay the item's value, inasmuch as the confiscation cannot be ordered or carried out. Thus in these cases the requirement is prescribed by a rule which recognizes no exceptions.

5. In some cases the compulsory application of confiscation based on section (1)

point a) could mean unfair disadvantage out of proportion with the offense's weight. Therefore section (5) gives the opportunity to the court to omit confiscation of an item in the perpetrator's possession. But this may take place only as an exception. Confiscation of an item endangering public safety cannot be omitted.

6. Property rights in the confiscated item transfer to the state when the decision declaring the confiscation becomes legally final. This follows from the purpose of confiscation.

7. According to the orders of sections (1) through (3) it is a condition for confiscation that an offense was accomplished. But society's protection makes confiscation necessary also when even though the act accomplished the legal fact situation of some offense, but the perpetrator's punishability is excluded. It would not be justified to make confiscation possible for the cases of all reasons which exclude punishability listed in Paragraph 22. Among these in cases of childhood age (Paragraph 23.) and ill mental condition (Paragraph 24.) the offense's objective side is realized, while in the case of low degree of the act's dangerousness to society (Paragraph 28.) even though the offense does occur, only the application of punishment is unnecessary. In such cases confiscation must be made just as possible as if the perpetrator's punishability did exist.

8. It would represent an unfair disadvantage going beyond the legal institution's intended purpose if confiscation would be in order any length of time

after commission of the offense. Section (8) takes the passing of time into consideration and makes confiscation possible only within a determined length of time. This deadline is identical with that length of time during which the punishability of the offense giving basis for the confiscation lapses. But too short a time would be contrary to the purpose of confiscation, therefore the Proposal establishes this in at least five years.

Restrictive Confinement

To Paragraph 78.

1. One of the most important tasks of our penal law is to decrease repeat criminal activity. The Proposal's orders concerning repeat offenders, special repeat offenders and multiple repeat offenders serve this purpose. There is a group of multiple repeat offenders where we may say that criminal activity has become their way of life. The antisocial attitude is so strong and lasting in these offenders that the generally applicable penal law tools are not sufficient against them. Therefore the Proposal makes it possible to apply such special measures to this group of repeat offenders which measure consists of a relatively indeterminate length of loss of freedom following the loss of freedom for a determined duration. This measure has dual purpose. Partly in the interest of public safety and society's tranquility it isolates this group of offenders for some time from the society of decent people, and partly it provides longer time in this category for educational labor, and by this for the goal that after their release these convicts also should be able to fit into society.

Circumspect determination of those offenders against whom restrictive custody may be in order is a basic condition for successful application of the measure and for insuring legality. The Proposal desires to take care that this measure should be applicable to only those offenders for whom society's protection really justifies this, and on the other hand it also insures that in case the conditions exist, the measure be applied consistently. The Proposal satisfies this requirement by specifying in detail the mandatory conditions (independent of considerations) for ordering restrictive custody, and provides room for the court's evaluation only in the area of the existence of these conditions.

Section (1) starts out from the point in determining the circumstances which provide the basis for ordering restrictive custody that this measure is in order only against multiple repeat offenders. Paragraph 137. point 14. defines the concept of multiple repeat offender. But from the viewpoint of ordering restrictive custody it is justified to narrow down this circle. Therefore the Proposal lists those offenses which are typical among those who lead a criminal way of life. At the same time this list does not make it possible to apply restrictive custody against those multiple repeat offenders who even though they have been sentenced at least three times for the listed offenses, but the weight of these does not indicate increased dangerousness to society. According to the Proposal, administered loss of freedom exceeding one year is a penalty of such weight from this the conclusion can be drawn that if the perpetrator has been sentenced at this extent at least three times in the past, there is need for restrictive confinement for him.

The Proposal assigns significance also to the perpetrator's age: restrictive confinement is in order only against persons who have completed their twentieth year of life. This is justified because in perpetrators who have not yet completed their twentieth year of life that antisocial attitude in general has not yet developed which provides the basis for this measure.

Even in case the above conditions exist, restrictive confinement can be ordered only if the court metes out loss of freedom for at least two years for the new offense. This order insures that restrictive confinement should be in order only with such penalties which by their content refer to the more significant objective weight of the offense. -- If the mandatory conditions for ordering restrictive confinement exist, application of the measure depends on the court's evaluation. The court must weigh whether there is need for the measure involving additional loss of freedom besides the loss of freedom meted out, in the interest of preventing the commission of additional offenses. If it decides this in the affirmative, it must order restrictive confinement.

2. The court does not have to make an order about the length of restrictive confinement. Section (2) determines its maximum duration in five years. Length of time longer than this would no longer serve the measure's purpose. Paragraph 79. section (1) gives orders about the minimum duration of restrictive confinement.

3. Section (3) provides the restrictive confinement's contentual definition. Restrictive confinement is loss of freedom which begins after the loss of

freedom sentence has been completed. Since the convict continues to remain under the circumstances of loss of freedom, those deadlines which otherwise begin with the completion of loss of freedom (for example the waiting time for relief: Paragraphs 102., 103. and 121.; for repeat offenses, the time passed since completion of the last punishment: Paragraph 137. points 12 through 14.), must be calculated from completion of the administration of restrictive confinement. If the convicted person is temporarily released from restrictive confinement, these deadlines begin when the release becomes permanent.

4. In case of agglomerate or overall punishment the maximum duration of loss of freedom for a specified length of time is twenty years. It would be contrary to the purpose of restrictive confinement if as a consequence of this measure the convict would be under the circumstances of loss of freedom for more time than twenty years. To wit, such long loss of freedom would no longer promote the convict's fitting back into society. Therefore section (4) orders that inasmuch as the total duration of loss of freedom and restrictive confinement is more than twenty years, that portion of the restrictive confinement by which holding the convict would exceed twenty years cannot be executed.

To Paragraph 70.

1. In regulating the restrictive confinement it would not be correct to start out from the point that these convicts are inherently incorrigible. The Proposal creates the possibility that those for whom there is serious hope to

conduct a decent way of life, should be able to be released prior to the maximum duration of restrictive confinement. The temporary release serves this purpose.

There are two conditions for temporary release: the convict should spend at least two years in restrictive confinement, and it should be reasonable to assume about him that he will not commit additional offenses. On the one hand this regulation insures that sufficient time be available for educating the convict, and on the other hand it also stimulates: that is, it provides an incentive for the convict to exhibit impeccable behavior during the loss of freedom and restrictive confinement's execution. To wit, the court can draw a conclusion primarily from the convict's behavior that he will not commit additional offenses. The two year time period is the shortest duration, thus the court may also grant the temporary release to the convict later.

2. During the time of temporary release the person temporarily released stands under patronizing supervision, is required to observe behavioral rules, and is being continuously supervised. The patronizing supervision insures that there should be no deep chasm between the loss of freedom and the circumstances of free life. It is not immaterial to the released person whether or not he observes the behavioral rules of patronizing supervision; this "interest" may also promote that the hopes concerning his fitting into society become realities.

To Paragraph 30.

1. From the character of temporary release follows that the court may terminate it. Termination has mandatory cases as well as ones depending on the court's evaluation. Temporary release may be terminated if the behavioral rules of patronizing supervision are violated, or when the temporarily released person is sentenced to corrective-educational labor or monetary fine punishment for intentional offense committed during the release. That is, it is not justified to attach such severe consequences to these circumstances that continuation of the restrictive confinement would be mandatory in all cases; it is more proper to entrust this to the court's evaluation. Inasmuch as the court does not terminate the temporary release, there is no obstacle to execute the corrective-educational labor sentence during the temporary release. -- Violation of the behavioral rules justifies termination of the temporary release if it involves so serious or systematic violation of the rules from which the court may assume that the temporary release did not reach its goal, but restrictive-confinement continues to be meted.

If loss of freedom is meted out for intentional offense committed during the temporary release, the temporary release must be terminated. -- From being sentenced for a careless offense, no conclusion can be drawn regarding whether the temporary release reached its goal, therefore termination of the release is not in order.

2. The convict would obtain unjustified benefits if in case of terminating

the temporary release its duration would be counted towards the restrictive confinement. Section (2) excludes the possibility of counting it.

3. Section (3) establishes a reason for excluding execution of the penalty for that case if the court terminates the temporary release -- based on section (1) -- due to the meting out of corrective-educational labor or monetary fine punishment. Corrective-educational labor and monetary fine punishment are milder legal consequences than restrictive confinement. If as a consequence of these penalties the restrictive confinement must be continued, execution of the corrective-educational labor or monetary fine penalty would represent unfair additional disadvantages. Execution of the corrective-educational labor would also involve practical difficulties, because this could take place only after carrying out the restrictive confinement.

4. Assuming it was not terminated, the temporary release becomes final with the expiration of the time period determined in Paragraph 79. section (1). This means that the convict will not have to serve the remaining part of the restrictive confinement's maximum duration.

5. If such loss of freedom must be administered to the temporarily released person due to which termination of the temporary release is not in order, the temporary release is interrupted for the duration of carrying out this loss of freedom. After completing the administration of loss of freedom, the temporary release continues for the time still remaining from its duration according to Paragraph 79. section (1). This type of case may occur if loss of freedom is

meted out for careless offense or for intentional offense committed before the temporary release, and in the latter case restrictive confinement is not ordered together with the loss of freedom.

6. It may happen that additional loss of freedoms meted out prior to completing the execution of restrictive confinement or during the temporary release, and at the same time restrictive confinement is ordered for the convict. According to section (4), if there are more than one incompleated restrictive confinement sentences, the one most disadvantageous to the convict must be carried out, that is, the one from which the remaining balance is the longest. That is, consecutive administration of several restrictive confinement sentences would represent such severe disadvantage which would not be in harmony with the measure's purpose.

To Paragraph 91.

1. Section (1) orders that those rights and obligations of the convict determined in Paragraph 41, section (3) are suspended during the restrictive confinement. This order is based on similar justification as Paragraph 41, section (3), which refers to the time of administering loss of freedom. If besides the loss of freedom the court applied other right-depriving or right-limiting supplementary punishments in addition to the loss of right to participate in public matters (prohibition to practice an occupation, prohibition to drive vehicles, or banishment), the rights affected by this are also suspended during the time of restrictive confinement. This can be seen by comparing the

Proposal's Paragraph 41. section (1) with Paragraph 55. section (2), as well as from the rules concerning calculation of the duration's of the above mentioned supplementary penalties (Paragraph 57. sec. (2), Paragraph 59. sec. (2), and Paragraph 60. sec. (2)). But if the court does not terminate the temporary release, the time spent on temporary release must be counted in the durations of all supplementary punishments mentioned. But this calculation is done only afterwards, after successful completion of the temporary release.

2. The Proposal does not contain general orders about the lapse of administrability of measures. Lapse has practical significance in the case of restrictive confinement. It would be contradictory if the administrability of restrictive confinement would never end, even though the loss of freedom -- together with which it was meted out -- had already been carried out, or a long time has passed since the lapse of its administrability. -- Section (2) determines a deadline of five years for ending the administrability of restrictive confinement, which begins with the lapse of the loss of freedom's administrability, or with the completion of the administration of this penalty. In case of escape the order concerning calculation of the deadline is in harmony with Paragraph 62. section (1), which regulates the deadline for the lapse of the main penalty's administrability also for that case if the convict escaped.

Supervised Probation [Patronizing Supervision]

To Paragraph 32.

1. Supervised probation is a measure serving to supervise, guide those who committed offenses, to aid and assist their fitting back into society. The Proposal does not provide opportunity to apply this measure by itself, but it can or must be ordered in connection with other legal institutions. The court may place the person on supervised probation when it released on conditional release (Paragraph 43. sec. (3)), placed on probation (Paragraph 72. sec. (4)), and for whom it suspended the administration of loss of freedom (Paragraph 89. sec. (6)). Supervised probation is mandatory in case of temporary release from restrictive confinement (Paragraph 79. sec. (2)).

Patronizing supervision of those of youthful age is mandatory in the cases of suspended loss of freedom, placement on probation, placement on conditional release, and temporary release from a correctional institution (Paragraph 110).

Patronizing supervision is in order also within the sphere of post-care of persons freed from loss of freedom. But regulation of this does not belong in the area of penal law, but is connected to the administration of punishments, therefore the Proposal does not deal with it.

Section (1) provides guidance concerning when the court should order patronizing supervision in cases which depend on its evaluation. Ordering patronizing supervision is in order if it is necessary for the successful completion of

conditional release or of placement on probation and of the probationary time of suspended loss of freedom, that the perpetrator be followed with systematic attention. But such evaluation is not in order in the case of temporary release from restrictive confinement, because it follows from the personality of the temporarily released person that following him with systematic attention is always necessary.

2. The patronized person's basic obligations are identical, regardless of for what reason they were placed under patronizing supervision. Section (2) lists these obligations.

The patronized person's most important obligation is to observe the prescribed behavioral rules. Not only the law but also the lower level legal decrees issued for the execution of individual legal institutions may establish behavioral rules of general character. -- But it may be necessary for the court to establish special behavioral rules, taking into consideration the patronized person's personality, family circumstances, and health condition. The Proposal also provides the opportunity for this.

Patronizing supervision can be successful only if the patronized person also helps the patron's work. The most important requirement in this area is that the patronized person maintain systematic contact with the patron and provide him with the information necessary for supervising. This must be insured by legal requirements also, because without this the patronized person's cooperation could not be forced, and the patronizing supervision could be frustrated.

3. The purpose of behavioral rules is that the patronized person should work according to his ability and should lead a law-abiding way of life, that is, should restrain himself from violating the law. This goal is served by obligations and prohibitions. Exhaustive listing of them in the law is not possible, considering the requirement to individualize. Therefore section (3) emphasizes those most important viewpoints which provide guidance for detailed regulation or for the court in determining the obligations and prohibitions. Thus it is not excluded that either the statute or the court establish behavioral rules of different character which also serve the mentioned goal.

Chapter V.

Meting out the Penalty

The penalty items established for the individual offenses in the Proposal's Special Part express the general evaluation of the dangerousness to society of those behaviors which fall under legal fact situations. Meting out the punishment is that activity of the court by which it determines the type and extent of punishment as well as the method of administering the penalty, within the limits established by law and taking into consideration the circumstances of the specific case.

Chapter V. contains those regulations according to which the court metes out the punishment. After determining the principles for meting out punishments (Paragraphs 83. and 84.), the Chapter discusses the regulations concerning

punishment of agglomerate offenses (Paragraphs 85. and 86.). This is followed by the regulations concerned with mitigation of the penalty (Paragraph 87.), rules concerning supplementary penalties applied instead of main penalties (Paragraph 88.) and rules for suspending the administration of penalties (Paragraphs 89. through 91.), as well as those regulations according to which the penalties meted out to the same perpetrator by various sentences are included in one overall penalty (Paragraphs 92. through 96.). The basis of stricter regulations concerning the various groups of repeat offenders is the increased dangerousness of the perpetrator's person to society. The Proposal serves the important goal of our penal policy, overcoming the criminal activity of repeat offenders by comprehensively regulating the meting out of penalties for special and multiple repeat offenders (Paragraphs 97. and 98.). — The series of regulations concerning the meting out of penalty is closed by regulating the calculation of prior confinement (Paragraph 99.).

Principles of Meting out the Penalty

To Paragraph 83.

1. Paragraph 83. contains the general principles of meting out penalties. These principles permeate all regulations concerning the meting out of penalties. Some orders of the Proposal refer to this expressly (for example Paragraph 45. sec. (2) in determining the next stricter or milder grade of administering the loss of freedom), but these principles must be taken into consideration in meting out the penalty also where this express reference is missing (for example for agglomerate punishments).

The punishment serves a specific purpose (Paragraph 37.), thus -- within the limits of the penalty item -- that punishment must be found which is suitable in the given case to achieve this goal.

In creating the Special Part the dangerousness of individual offenses and their perpetrators to society can be defined only in an abstract manner. But meting out the punishment must conform to the dangerousness of the offense and of its perpetrator to society.

To a significant extent the degree of an offense's dangerousness to society is the function of the act's consequences. Thus the damage caused, or the value with respect to which the offense was committed, has outstanding significance from the viewpoint of the dangerousness of offenses against property to society.

In the area of economic offenses the economic disadvantage, for offenses against bodily integrity and health the duration and severity of the injury or illness caused may be expressions of dangerousness to society. -- Characteristics of the injured legal object (for example the fact that an offense against property damaged the public's property), the injured person's personal characteristics and the circumstances of the offense's commission (the commission's manner, tool, place, time) may influence the extent of the act's dangerousness to society. More frequent occurrence of the given offense increases its dangerousness to society.

The perpetrator's dangerousness to society is the consequence of the dangerousness to society of the offense committed by him. Thus the perpetrator is

dangerous to society not in general terms but due to his committing the offense. The danger to society which follows from the perpetrator's person — according to the foregoing — may be increased or decreased by various, mainly subjective circumstances. The perpetrator's previous record has great significance from this viewpoint. The Proposal distinguishes repeat offenders, special repeat offenders, and multiple repeat offenders; it attaches disadvantageous consequences to them. Other cases of the punishment record must be evaluated within the framework of meting out the penalty.

Conclusions about the perpetrator's dangerousness to society can often be drawn also from his behavior after committing the offense.

The Proposal evaluates by differing penalty items, whether the offense was committed intentionally or carelessly. But the degree of intentional or careless guilt has significance in meting out the penalty. In general conclusions can be drawn from the action's objective circumstances for the greater degree of intent. — The motivation and purpose of the offense are also connected to the degree of guilt.

All those circumstances which must be taken into consideration in the interest of achieving the punishment's goal in meting out the penalty, are aggravating and mitigating circumstances. Thus the court takes into consideration the circumstances directly related to the offense and the dangerousness of the perpetrator to society, the degree of guilt, as aggravating or mitigating circumstances. But there are also numerous other factors which may have

significance for achieving the punishment's goals, from the viewpoint of evaluating the act and the perpetrator. The Proposal refers to these by the designation of "other aggravating and mitigating circumstances". In general, for example the passage of a longer period of time between committing the offense and judging it, the perpetrator's family situation, his behavior during the penal process, reimbursement for the damage caused by the offense have significance.

The Proposal does not list the aggravating and mitigating circumstances even by giving examples. On the one hand, such list cannot be complete and final; on the other, in the given case the same circumstance may be mitigating, in a different situation of commission aggravating or immaterial; this character of it may also change under the effect of development of the social and economic conditions.

2. This Paragraph's theoretical guidance refers not only to the main penalty but also to the possibly applied one or more supplementary penalties, that is, to the entirety of meting out the punishment.

The rules for meting out the punishment are in general not applicable to measures. But in several respects the application of measures is connected to the rules of meting out the penalty, for example forced medical treatment or the ordering of forced curing treatment according to Paragraph 76. are functions of the assumed meting out of punishment, during which the principles of meting out the punishment must be taken into consideration.

To Paragraph 84.

The death penalty is an exceptional type of punishment in the Proposal's penalty system. Therefore a special paragraph gives orders about meting out the death penalty, which emphasizes the penalty's exceptional character and determines the conditions for applying it in accordance with this. These conditions are: the outstanding danger the offense and the perpetrator pose to society, the outstandingly high degree of his guilt, considering which society's protection can be insured only by applying the death penalty.

The Agglomerate Penalty

To Paragraph 85.

The Proposal regulates the agglomerate offense in Chapter II. Title I. dealing with the offense and the perpetrator (Paragraph 12.), while it gives orders about the agglomerate penalty within the circle of meting out penalties.

Section (1) declares that in the case of agglomerate offense one penalty must be meted out. The agglomerate penalty is a unified penalty from all viewpoints; it means one-time sentencing without regard to the number of offenses in the agglomerate offense.

Various principles developed during the evolution of penal law for punishing the agglomerate offense; the Proposal regulates agglomerate punishment by taking the principles of absorption and asperation [?? sic] as foundations.

The former wins expression in section (2): the main penalty must be meted out by using the most serious of the offenses in the agglomeration of offenses as foundation, the other offenses in the agglomeration of offenses must also be evaluated within the framework of this.

But application of the general rule of section (2) without recognizing exceptions may in a given case involve the consequence that even the upper limit of the most severe penalty is not sufficient to achieve the punishment's goal. Therefore section (3) provides the opportunity that if the penalty items for at least two of the offenses in the agglomeration of offenses is loss of freedom for definite length of time, the court may increase the most severe penalty item by half; but even the penalty determined in this manner cannot reach the cumulative total length of the upper limit of the penalty items of individual offenses in the agglomeration. The condition for the increase is that the upper limit of the penalty item according to section (2) would not be sufficient in the specific case to achieve the punishment's goal. But the loss of freedom meted out as agglomerate punishment cannot exceed twenty years according to Paragraph 40. section (2).

The Proposal gives no separate orders about the lower limit of loss of freedom meted out as agglomerate punishment. From the rule included in section (2) follows that in such a case the minimum duration is the lower limit of the penalty item established for the most serious offense; it is unnecessary to increase this by a general order of the law.

Paragraph 85. does not contain orders for that case if the agglomerate punishment is corrective-educational labor or monetary fine punishment. Regarding the corrective-educational labor, Paragraph 49. section (4) sets the longest duration of agglomerate punishment in three years in contrast with the general upper limit of two years. -- In case of agglomerate monetary fine punishment, in contrast with the general maximum extent established in 180 daily items, the maximum extent of agglomerate punishment is 270 daily items (Paragraph 51. sec. (2)). These orders are in harmony with the one that the penalty item's upper limit may be increased by half in the case of agglomerate loss of freedom also. The principle defined in section (3) provides guidance also for agglomerate monetary fine punishment and corrective-educational labor applied as agglomerate punishment, that is, increasing the penalty item's upper limit (180 daily items, or two years' corrective-educational labor) may take place only if this is necessary to achieve the punishment's goal.

To Paragraph 86.

Application of supplementary punishments is done according to the same rules in the case of agglomerate punishment as in sentencing for one offense. If the law mandates or allows application of some supplementary punishment for any of the offenses in the agglomeration of offenses, it is also in order in the case of meting out the agglomerate punishment. The "can be meted out" part of the text in section (1) does not mean that in case of agglomerate offenses the law always leaves application of supplementary penalty up to the court;

if the law compulsorily orders supplementary penalty for some offense, it must be applied also in the case of agglomerate offenses.

Increasing the extent or duration of supplementary penalties meted out as agglomerate punishment would be unwarranted increase in severity not in harmony with the goal of supplementary punishment, therefore the Proposal does not provide the opportunity for it.

Mitigating the Penalty

To Paragraph 87.

1. The Proposal's Special Part determines the penalty items of individual offenses in such a way that within this punishment of the very mild as well as of the very severe case alike can be meted out. But there can be cases in which the dangerousness of the act and of the perpetrator to society are of such low degree that appropriate punishment cannot be meted out within the Special Part's penalty items, because it would be too severe. The Proposal insures expansion of the framework of penalty items for such exceptional cases and by doing so it provides broader opportunities for individualization. Thus mitigation of the penalty in an exceptional institution, the Proposal emphasizes this character of it by the "exceptionally" part of the text. That is, in case of application of this legal institution in broad circles the significance of legal penalty items would decrease and the penalty's goal would not be properly achieved.

2. The Proposal's Special Part establishes the penalty items of loss of

freedom for determined length of time in such a way that the highest lower limit is ten years, followed by low limits of five, two and one years respectively. If the Special Part does not designate the lower limit of loss of freedom, the general minimum duration of punishment — three months — provides guidance (Paragraph 40. sec. (2)). Paragraph 87. section (2) designates in connection with each of the low limits mentioned, what low limit replaces it in case the penalty is mitigated.

For special repeat offenders the penalty item's low limit increases according to Paragraph 97. section (3); the penalty must be meted out with low limits of six months, one year and six months, three years, seven years and twelve years respectively. Points a) through d) of section (2) refer to these special low limits by the words "at least". This means that if for example for a special repeat offender the penalty item's low limit increases to three years, section (2) point c) must be applied in mitigating the penalty.

While the penalty which can be meted out by applying points a) through c) is always loss of freedom, points d) and e) provide the possibility of applying other punishment types instead of loss of freedom also, considering that they concern mitigation of such penalty items the low limits of which are of relatively short duration. If the penalty item's low limit is loss of freedom for one year, instead of this loss of freedom of shorter duration — that is, a minimum of three months — or corrective-educational labor can be meted out. The Proposal also considers those cases when even this punishment is too severe, at such times it provides the opportunity to apply monetary fines as

punishment. But only the perpetrator's personal circumstances deserving special consideration may provide the foundation for this, for example his severe illness, or very difficult family circumstances. Based on point d) monetary fine punishment is not in order with respect to the circumstances related to the offense's objective side, because this would mean unjustifiable mitigation of the original penalty item.

Where the penalty item's low limit is loss of freedom for less than one year, that is, three months, point e) makes it possible to mete out corrective-educational labor or monetary fine punishment. Considering the character and severity of these latter penalty types, the Proposal provides no opportunity to mitigate the minimum duration of corrective-educational labor (Paragraph 49. sec. (4)), and the minimum extent of monetary fine punishment (Paragraph 51. sec. (2)).

Paragraph 97. section (4), and Paragraph 98. section (2), respectively, contain differing rules for mitigating the penalties of special repeat offenders and multiple repeat offenders.

3. The Proposal orders the same penalty item to be applied to attempt and to aiding in the offense as for the completed offense (Paragraph 17. sec. (1)), and for the culprit (Paragraph 21. sec. (3)), respectively. But in general the offense which remains in the attempt stage is dangerous to society in a lesser degree than the completed one, and the accessory before the fact's behavior also usually receives more lenient evaluation than the culprit's. Therefore

section (3) allows mitigation by two degrees in the cases of attempt and assisting in the offense. This means that instead of section (2) points a) through d) the penalty can be meted out on the basis of the next points of section (2). The general condition for mitigating the penalty refers also to section (3): the institution is of special character and it is in order if the penalty which could otherwise be meted out would be too severe in the given case. Those conditions may provide foundation for applying section (3) which concern the offense's attempt stage (for example the so-called remote attempt) or to the perpetrator's role as accessory before the fact. Those mitigating circumstances which are independent of the fact that the offense remained in the attempt stage or of the fact that the perpetrator is an accessory before the fact cannot serve as basis for mitigation by two degrees (for example no prior punishment record, family status).

4. While the penalty can be mitigated on the basis of sections (1) through (3) only within determined limits, section (4) provides the opportunity for unlimited mitigation of the penalty. Besides mitigation extending to the non-general low limit of penalty determined in the offense's penalty item, limitless mitigation also includes even the possibility of applying the mildest penalty type; thus the smallest extent of monetary fine punishment may also be meted out instead of the most severe punishment. But even in the case of limitless mitigation there is no way to mete out more lenient punishment than the low limit of the given penalty type — for example loss of freedom shorter than three months —, because this would endanger the punishment's effectiveness.

It justifies the legal institution of unlimited mitigation that there are such irregular cases when the general rules of softening the punishment do not provide the opportunity for appropriate evaluation. The Proposal limits unlimited mitigation to those cases in which the law permits this. Such are the attempt committed on unsuitable object or with unsuitable tool (Paragraph 17. sec. (2)), ill mental condition which limits reason (Paragraph 24. sec. (2)), duress or threat limiting the perpetrator's behavior corresponding to his will (Paragraph 24. sec. (2)), not recognizing the necessary extent of rightful defense or the size of harm caused in terminal danger due to fright or excusable excitement (Paragraph 29. sec. (3), Paragraph 30. sec. (3)), voluntary termination of danger in offenses against traffic safety and in endangerments in railroad, aerial or waterway traffic (Paragraph 184. sec. (4), Paragraph 194. sec. (4)), fulfillment of neglected support before imposition of preliminary sentence (Paragraph 194. sec. (4)), marriage between the perpetrator and victim of forced sexual intercourse and of violence against modesty prior to issuance of preliminary sentence (Paragraph 197. sec. (3), Paragraph 198. sec. (3)), disclosing the falsity of accusation or reporting the falseness of an instrument of proof before the case ends (Paragraph 236. sec. (2), Paragraph 241. sec. (2)), abandonment of prisoner uprising (Paragraph 246. sec. (4)), voluntary termination of public danger (Paragraph 259. sec. (6)), abandonment of terrorist activity and of acquiring control over an aircraft (Paragraph 261. sec. (5), Paragraph 262. sec. (4)), active repentance in offenses against property and against the military obligation Paragraph 332., Paragraph 342.), voluntarily reporting to the authorities in case of escape (Paragraph 343.

sec. (7)), abandonment of mutiny (Paragraph 352. sec. (5)).

Limitless mitigation refers only to the main penalties, because the rules concerning supplementary penalties provide the opportunities for adequate individualization.

Supplementary Penalty Applied Instead of Main Penalty

To Paragraph 38.

Application of supplementary penalty as independent penalty instead of the main penalty is a possibility serving to individualize the penalties. To wit, such cases occur in practice when some supplementary penalty by itself is also suitable to achieve the punishment's goal, for example if the only reason for a traffic offense of minor significance is that the perpetrator is unsuitable to drive vehicles, prohibition to drive vehicles may adequately serve society's protection. According to Paragraph 38. section (3) prohibition from practicing an occupation, prohibition to drive vehicles, banishment, expulsion and confiscation of property may be applied independently.

The fundamental contentual element of independent application of supplementary penalty is that at such times no main penalty is meted out; from this follows that this may take place only exceptionally. The Proposal emphasizes this.

Supplementary penalty may be applied as main penalty when the given offense's penalty item is not more severe than two years' loss of freedom. That is, the dangerousness to society of offenses threatened with more severe penalty than

this is so significant that in the interest of the penalty's goal, application of main penalty cannot be omitted.

A further condition is that the punishment's goal defined in Paragraph 37. should be able to be achieved by independent application of supplementary penalty. Existence of this condition must be established by careful evaluation of the perpetrator's personal circumstances, the character and weight of the offense, and of the effectiveness of the supplementary penalty desired to be applied.

The Proposal excludes the possibility of applying several [more than one] supplementary penalties simultaneously as independent penalty. To wit, this would be contrary to the legal institution's character. If in the given case the conditions exist for applying several supplementary penalties, the conclusion must be drawn from this that the punishment's goal cannot be achieved without meting out a main penalty.

Suspending the Penalty's Administration

To Paragraph 89.

1. Those legal institutions which the science of penal law lists under the collective concept of conditional sentencing occupy an important place among the penal law tools not involving loss of freedom. The Proposal recognizes two forms of conditional sentencing: placement on probation and suspension of the penalty's execution; it regulates the former as measure and the latter in the area of meting out penalties.

Section (1) makes it possible to suspend the execution of loss of freedom and of monetary fine punishment among the main penalties. Execution of corrective-educational labor cannot be suspended; it would be contrary to the character of this punishment if it were not executed after the sentence becomes legally final. There is no possibility to suspend supplementary penalty applied either together with a main penalty or independently. That is, supplementary penalties are used for such unique purpose that suspension of their execution would not be compatible with this. From this follows that the effect of suspending the main penalty's execution does not extend over the supplementary penalty meted out.

The basis for suspending the penalty's execution is that assumption that the punishment's goal defined in Paragraph 37. can be achieved even without administering it. From this follows that suspension of the execution of severe penalties would not be proper. In case of loss of freedom, section (1) determines that upper limit in one year in which the penalty's execution can be suspended. Differentiation according to the penalty's extent is not justified for monetary fine punishments.

When examining whether the punishment's goal can be achieved without carrying it out, particular attention must be paid to the perpetrator's personal circumstances. This means that suspension of the execution of punishment is in order primarily for that perpetrator who committed the offense merely as a matter of opportunity [chance], but otherwise conducts a decent way of life. Within personal circumstances the lack of prior criminal record has

increased significance, but it does not follow from this that execution of the penalties of those who commit offenses for the first time should be suspended in general. At the same time the fact in itself that the perpetrator has a prior record of punishment -- if he does not have to be considered a repeat offender --, is not an obstacle to suspending administration of the penalty. -- But emphasis of the particular significance of personal circumstances does not mean that all principles of meting out penalties as defined in Paragraph 33. do not have to be kept in mind in connection with the suspension of the penalty's administration.

2. While suspension of the execution of loss of freedom not exceeding one year and of monetary fine punishment is not an exceptional institution, suspension of the execution of loss of freedom longer than one year but not exceeding two years can take place only in case of circumstances deserving particular consideration. These may be connected primarily to the perpetrator's person, such can be for example the perpetrator's advanced age, or severe illness.

The Proposal does not provide opportunity to suspend the execution of loss of freedom exceeding two years. The objective weight of the offense excludes this.

3. Suspension of the execution of punishment is done for a probationary time. In case of monetary fine punishment the probationary time's duration is one year; the weight of offense serving as foundation for monetary fine punishment

is not so significant that longer probationary time than this would be necessary. But with respect to loss of freedom the Proposal determines only the shortest and longest durations of probationary time, within this it assigns the determination of the probationary time's length to the court. In determining the limits of probationary time the Proposal differentiates between felony and misdemeanor.

It is justified to limit individualization by the judge which is necessary in determining the probationary time by requiring the probationary time to be determined in years, and that it cannot be shorter than the loss of freedom meted out. That is, determining the probationary time in months, weeks or days would be impractical in practice, there is no need for such extent of individualization. -- It would represent contradiction if the probationary time were shorter than the duration of the loss of freedom. Naturally the order excluding it refers only to the suspension of loss of freedom exceeding one year.

4. According to Paragraph 90. it is not excluded that the court may also suspend execution of punishment meted out for careless offense committed during the probationary time. Thus it may happen that the convict spends several [more than one] probationary times simultaneously. The Proposal does not provide the possibility for including suspended penalties into an overall penalty; but it would not be proper if in such case the probationary time of one suspended penalty would expire, while the other would still continue to

run. Section (4) eliminates this possibility by declaring that the probationary time of the previous penalty extends until the expiration of the probationary time of the latter penalty.

5. From the orders of Paragraph 91. derives the possibility to administer such loss of freedom to the perpetrator who stands under the effect of suspended punishment, because of which administration of the suspended punishment cannot be ordered (for example in case of penalty meted out for offense committed prior to the probationary time). It would be a contradiction if the probationary time would expire during the duration of loss of freedom. Therefore section (5) declares that in such case the probationary time extends with the duration of the loss of freedom.

6. Section (6) makes it possible to place the perpetrator under patronizing supervision besides the suspended loss of freedom. The patronizing supervision regulated by Paragraph 82. means that individualized behavior rules are prescribed for the convicted person, and the patron oversees the observance of these; therefore in general it is an effective tool of penal law. In judging whether in the given case it is necessary to place the perpetrator under patronizing supervision, his personality as well as the weight and character of the offense must all be taken into consideration. In case of careless offense for example patronizing supervision is usually not necessary.

In case of suspending the execution of monetary fine punishment it would not be warranted to place the perpetrator under patronizing supervision, therefore the Proposal does not provide the possibility for this.

To Paragraph 90.

The regulations which determine the general conditions for suspending the execution of penalty leave the decision of this to the court's evaluation. But there are such cases when the possibility of suspension must be excluded by mandatory order of the law. Paragraph 90. contains these.

Suspension of the penalty's execution is excluded if the intentional offense was committed prior to completion of administration of loss of freedom or during probationary time of its suspension.

The conclusion that the punishment's goal cannot be achieved without carrying it out cannot be concluded in every case from the commission of careless offense; thus in such case exclusion of the possibility of suspension is not justified, it is more practical to make this dependent on the court's evaluation.

Administration of the punishment of repeat offender also cannot be suspended. According to the interpretive regulation contained in Paragraph 137. point 12. the repeat offender has already earlier been sentenced to administered loss of freedom for intentional offense and this — as demonstrated by the additional intentional offense — proved ineffective. It can be generally assumed for these perpetrators that the punishment's purpose can be achieved only by executing it. But inasmuch as the perpetrator with prior record of punishment does not have to be considered a repeat offender, it is unnecessary to exclude the possibility of suspension.

Among supplementary penalties the prohibition to participate in public affairs and confiscation of property are in order only together with administered loss of freedom. But the meting out of these supplementary penalties is not necessary to be listed among the reasons which exclude the suspension of the punishment's administration, because in the process of meting out the penalty the court generally would make a decision first about the main penalty -- within the framework of this also about suspending it --, and would take a stand concerning the application of supplementary penalties only by considering the main penalty's extent and administrability.

To Paragraph 91.

1. If the court suspended the penalty's administration due to the lack of legal conditions, or the convicted person proved unworthy for suspending the administration, administration of the suspended penalty must be ordered. Section (1) contains the general rules for this.

In case of suspension ordered contrary to the reason for exclusion determined in Paragraph 90., execution of the punishment can be ordered only if it was decided during the probationary time that the law had been violated. That is, if the probationary time has been successfully completed, there is no longer a reason to administer the penalty.

Offense committed during the probationary time does not result in every case in the administration of suspended punishment; the Proposal regulates this

in a differentiated manner, taking the new penalty into consideration. If administered loss of freedom is meted out for an offense committed during the probationary time, the earlier assumption that the punishment's goal can be achieved also without administering it has been proven wrong. Therefore in this case the suspended penalty must be carried out. -- Suspension of the administration of penalty meted out for careless offense committed during the probationary time is not excluded according to Paragraph 90. point a); it is in harmony with this order if the additional suspended loss of freedom does not call for execution of the punishment suspended earlier.

Inasmuch as corrective-educational labor or monetary fine punishment is meted out for an offense committed during the probationary time, conclusion cannot be drawn from the new penalty that administration of the suspended penalty is necessary. This is witnessed by the fact that only the penalties mentioned, and not loss of freedom which would have indicated a more serious evaluation, were applied for committing the additional offense. In such case the order to administer the suspended loss of freedom would subject the perpetrator to unjustified disadvantage. But if the perpetrator exhibits such behavior after being sentenced to corrective-educational labor because of which the corrective-educational labor must be changed to loss of freedom, the conclusion must be drawn from this that it is also justified to order administration of the penalties suspended earlier.

If the perpetrator sentenced to suspended loss of freedom was placed under

patronizing supervision on the basis of Paragraph 39, section (6), the conclusion can be drawn also from violating the behavioral rules of patronizing supervision that the punishment's administration is necessary. But the weight of violating the behavioral rules may be very different. It would be improper to attach the consequence to a rulebreaking of minor significance that the loss of freedom must be carried out. Therefore the Proposal prescribes administration of the suspended penalty only for cases of severe violation of the behavioral rules. The decision of whether the rulebreaking was serious, depends on the court's evaluation.

2. The orders of section (1) refer to all suspended penalties; section (2) supplements these with those regulations which provide guidance only for suspended monetary fine punishments. The monetary fine punishment is a milder punishment type than loss of freedom and corrective-educational labor; it is therefore justified that execution of suspended monetary fine punishment should take place also if suspended loss of freedom, corrective-educational labor or administered monetary fine punishment is meted out for an offense committed during the probationary time. But in the case of meting out additional suspended monetary fine punishment the [former's] administration cannot be ordered.

The Overall Penalty

To Paragraph 92.

1. The overall penalty is in close relationship with the aggregate penalty.

Agglomerate punishment must be meted out when several offenses of the perpetrator are judged in one proceeding. But inasmuch as the perpetrator's several offenses are judged in several proceedings, the penalties meted out in the separate sentences must be combined into an overall penalty, if the conditions for this exist.

Section (1) defines the sphere of penalties which can be combined into an overall penalty by starting out from the point that successive administration of several penalties without interruption represents such disadvantage to the convicted person which must be eliminated by decreasing the extent of punishment. From this follows that the Proposal permits only such penalties to be combined into an overall penalty the subsequent serving of which involves an increased disadvantage. This exists if the perpetrator was sentenced to several losses of freedom of specified lengths of time, several corrective-educational labor sentences, or loss of freedom for a definite length of time and corrective-educational labor.

If one of the penalties is loss of freedom for life, overall punishment cannot be meted out because in such case Paragraph 69. excludes the administration of loss of freedom for a specified length of time and of corrective-educational labor.

Only those penalties can be combined into an overall penalty which have been meted out by legally final sentences. There would be no sense in including a sentence which is not legally final in the overall penalty, because the second degree [appeals] court may change it.

2. Section (2) defines those conditions in case of which combining the penalties listed in section (1) into an overall penalty is in order. A fundamental condition is that the penalties should have to be administered. That is, those circumstances which justify combining into an overall penalty, do not exist for suspended penalties.

Even among the penalties to be administered, only those can be combined into an overall penalty which have not been administered yet at the time of combining into the overall penalty, or which are being carried out continuously. Those penalties must be considered not yet administered the administration of which has not even begun yet, or if it has begun, it has not yet been completed yet. If the convicted person has already fulfilled one of the penalties, and is serving the other one continuously, the reason for combining into overall penalty exists just as in the case of not yet administered penalties. But inasmuch as one of the penalties has already been administered and the administration of the other has not yet begun, that is, the execution is not continuous, the convicted person does not suffer the increased disadvantage deriving from continuous execution; therefore inclusion in the overall penalty is unnecessary.

3. Monetary fine penalty cannot be included in an overall penalty with monetary fine penalties meted out in another sentence or with the main penalty. Section (3) excludes the loss of freedom replacing a monetary fine penalty due to changeover from being combined into the overall penalty.

This is justified by the short duration of such losses of freedom, and further, by the fact that the opportunity exists even after the changeover to pay the monetary fine penalty, thus including the loss of freedom replacing a monetary fine penalty in the overall penalty could cause practical difficulties.

To Paragraph 93.

1. Section (1) establishes the general rule regarding the overall penalty's type.

2. Section (2) establishes the lower and upper limits for the overall penalty's extent. The overall penalty must exceed the upper limit of the most severe penalty noted out in the individual sentences, it would be incorrect to give validity to the principle of absorption. Combining two penalties into an overall penalty cannot result in the total vanishing of one of them, but this is not excluded in the case of more than two penalties. -- The overall penalty must not reach the total duration of the penalties included in the overall penalty, because this would be contrary to the overall penalty's goal.

3. In the case of more than one corrective-educational labor sentences it is possible that the extent of deductions from the wage was established differently by the individual sentences. Section (3) provides such flexible regulation for the case of including them into an overall penalty, which

establishes the lower and upper limits of the deduction's extent, using the penalties included in the overall penalty as foundation.

4. Usually combining into an overall penalty takes place if the perpetrator committed an additional offense after the earlier sentence became legally final. But it is also possible that all offenses judged in the sentences serving as foundation for the overall penalty were committed before even the first sentence passed became legally final, thus theoretically the opportunity did exist for agglomerate judging, but this did not take place for some reason, for example because one of the offenses became known to the authorities only at a later date. Section (4) establishes specific rules for this case, called quasi agglomeration by the legal science.

The agglomerate penalty is more favorable for the perpetrator than if each individual offense were judged separately. From this follows that if the legal conditions for agglomerate judging existed, but this still did not take place, when combining the penalties meted out by the several sentences into an overall penalty the overall penalty's duration must be determined so as if agglomerate penalty were being meted out. The overall penalty's duration must reach the most severe penalty, that is, the combination into overall penalty cannot result in a penalty the duration of which is shorter than the most severe one of the earlier penalties; but complete vanishing of one of the penalties may occur even when only two penalties are combined into an overall penalty. The overall penalty cannot reach the total duration of the penalties

in this case either. Penalty meted out on the basis of section (4) represents one sentence.

To Paragraph 94.

1. Due to combining into one overall penalty, one penalty is carried out instead of the earlier several penalties. Thus administration of the loss of freedom meted out in the overall penalty must take place in one degree even if losses of freedom to be administered in different degrees were combined into the overall penalty. The general rule is that the overall penalty must be carried out in the most severe one of the degrees determined in the individual sentences. To wit, in the contrary case the combining into an overall penalty could result in a manner of administration less adequate for the penalty's purpose, and would provide the convict with an advantage not in harmony with the legal institution's purpose.

In the cases listed in Paragraph 42. section (2) the loss of freedom must be carried out in penitentiary if the penalty's duration is at least three years, while for a multiple repeat offender the loss of freedom of at least two years is carried out in penitentiary according to Paragraph 42. section (3). — The second sentence of Paragraph 94. section (1) gives orders about that case if such penalties are combined into an overall penalty the extent of which does not exceed three years — two years for multiple repeat offenders —, but the other conditions of the penitentiary degree exist, and the overall

penalty's extent is at least three years, or at least two years for multiple repeat offenders. In such case the overall penalty must be administered in penitentiary degree.

2. There can be such cases in practice when application of the general rule concerning the overall penalty's degree of execution would represent unfair disadvantage to the convict, for example in a case when a loss of freedom sentence of longer duration to be administered in jail and one of shorter duration to be administered in prison meet. Section (2) provides the opportunity for eliminating this by permitting the next more lenient degree to be specified. But it is excluded that the court specify a more severe degree during inclusion into overall punishment than the one regulated by section (1). This would mean such review of penalties meted out by legally final sentences which would not fit into the framework of including them in an overall penalty.

To Paragraph 95.

1. According to Paragraph 92. section (1), loss of freedom for determined length of time, meted out by a legally final sentence, and corrective-educational labor must be combined into overall penalty. In such case the overall penalty must always be specified in loss of freedom. This follows from the fact that if some court determined that the punishment's goal can be achieved by loss of freedom, this determination cannot be modified by the circumstance that the convicted person also committed another offense.

The loss of freedom and the corrective-educational labor cannot be combined into an overall penalty if one of the penalties has already been executed in its entire duration; that is, for two penalties of differing types there is no possibility of continuous execution.

2. If the court combines corrective-educational labor with loss of freedom into an overall penalty, it changes the corrective-educational labor to loss of freedom. Therefore the calculation which provides guidance according to Paragraph 50. section (2) must be considered binding also in determining the overall penalty's duration. — The regulation that when combining into an overall penalty, the corrective-educational labor must be considered as loss of freedom to be served in jail is in harmony with Paragraph 50. section (1). If there is loss of freedom to be administered in a more severe degree among the penalties to be included in the overall penalty, the overall penalty's degree of administration must be determined according to Paragraph 94.

To Paragraph 94.

1. Those circumstances which justify that individual main penalties be combined into an overall penalty, do not exist for supplementary penalties. Therefore section (1) excludes the combining of supplementary penalties into overall penalty. — According to Paragraph 92. section (3), loss of freedom replacing monetary fine punishment cannot be included in overall penalty, in harmony with this, in case monetary fine punishment is changed over, the loss

of freedom replacing it must also be excluded from being combined into the overall penalty.

2. The prohibition to include supplementary punishments in the overall penalty may represent practical difficulties and unfair disadvantage in the case of supplementary penalties of identical content. Several penalties have the same content if the legal disadvantage included in them is identical, differing from each other only in extent. For example prohibition from participating in public affairs meted out by two sentences are identical in content; but two banishments referring to different locations are not identical in content.

-- The question of how supplementary penalties of identical content meted out by separate sentences must be administered, is regulated by section (2) in a differentiated matter, taking into consideration the different character of supplementary penalties. The main rule is that that one of the supplementary penalties of identical content must be carried out which is more disadvantageous to the convicted person (for example, that one of two prohibitions from participating in public affairs from which there is more time remaining).

However, confiscation of property and supplementary monetary fine punishments meted out by different sentences must be executed without regard to each other. Compiling of supplementary penalties of property character is not worrisome either from the theoretical or from the practical viewpoint. The rules concerning supplementary penalties must be applied also when identical

content supplementary penalties are meted out by different sentences as independent penalties instead of main penalties. That is, application as independent penalty does not change the penalty's character from this viewpoint.

Orders Concerning Special Repeat Offenders

To Paragraph 97.

1. Preventing the repetitive commission of offenses, effective defense against repeat offenders is one of the Proposal's important goals.

Those who repeatedly commit offenses can be divided into four groups from the viewpoint of their dangerousness to society, according to criminological and law application experience. Different legal consequences are needed against the perpetrators belonging into the individual groups. The determination of these is closely related to meting out the penalty.

The groups of those who repeatedly commit offenses and the legal consequences applicable against those belonging into the individual groups can be summarized in the following:

a) Those belong into the first group who had committed [an] offense prior to committing the [present] offense, and the court meted out punishment for it. The consequence of this is that the court may value the prior record as aggravating circumstance. The Proposal gives no orders about this category, as it does not list the aggravating circumstances even by way of giving examples.

b) A repeater is a person who committed an intentional offense, and five years have not yet passed since completion of administered loss of freedom meted out earlier for intentional offense or since the end of its administrability until the new offense's commission. Paragraph 137. point 12. gives interpretive orders regarding this.

It also provides guidance for the repeat offender that having been sentenced earlier is an aggravating circumstance, but further legal consequences also attach to this. These are: the loss of freedom must be administered in a more severe degree (Paragraphs 43. and 44.), placement on probation is excluded (Paragraph 72. sec. (2)), execution of the punishment cannot be suspended (Paragraph 90. point b)), the rules of relief by the court are stricter (Paragraph 103. sec. (2)).

c) Those repeat offenders who committed not any kind but the same kind or similar character offenses repeatedly, represent an increasingly dangerous group. The Proposal calls these special repeat offenders; Paragraph 137. point 13. gives interpretive orders for the concept of special repeat offender.

The Proposal regulates special repetition as an institution for meting out penalties in the General Part, and not as a qualifying circumstance of the Special Part.

But there are such unique cases of special repetition which call for regulation in the Special Part. The Proposal contains such orders in connection with the taking of human life (Paragraph 166. sec. (2) point h)), with theft (Paragraph

316. sec. (2) point e)), embezzlement (Paragraph 317. sec. (2) point d)), swindle (Paragraph 318. sec. (2) point d)), and receiving stolen goods (Paragraph 326. sec. (2) point b)). Paragraph 166. section (5) contains the interpretive order for the first one, Paragraph 333. for the others.

d) The multiple repeat offenders compose the most dangerous category of those who repeatedly commit offenses. Paragraph 98. gives orders about meting out their punishments, the justification tied to this explains the basic questions concerning multiple repeat offenders.

2. The most important legal consequence tied to special repetition is that the upper and lower limits of the penalty items established for the offense in the Special Part increase. The extent of the upper limit's increase is half of the penalty (for example in the case of an upper limit of three years the special repeat offender's penalty is loss of freedom ranging to four years and six months); but even the increased upper limit cannot exceed fifteen years. In the Proposal's penalty system this means that the penalty item of offenses threatened by loss of freedom ranging to ten years increases to loss of freedom ranging to fifteen years for special repeat offenders, but there is no further increase in cases to be punished by loss of freedom ranging to fifteen years because this would mean unnecessary increase of severity. Attention must also be paid to the fact that loss of freedom ranging to fifteen years is usually an alternative penalty item to loss of freedom for life and to the death penalty; thus special repetition can also be evaluated by selecting among the alternative penalties.

Special repetition is not excluded in the case of such offenses the sole penalty item for which is monetary fine punishment. The Special Part's penalty items do not determine the upper limit of monetary fine punishment, Paragraph 51. section (2) establishes this by general order as 190 daily items. For special repeat offenders this increases by half.

If the special repeater's offense is to be punished more severely due to a qualifying circumstance determined in the Special Part, the penalty item's increase must start out from this more severe penalty, for example in case of rowdiness committed in a group the loss of freedom ranging to three years determined in Paragraph 271. section (2) must be increased by half. That is, if only the penalty item for the offense's so-called basic case without qualifying circumstances were to increase, in case of qualifying circumstance the significance of special repetition would vanish, and this regulation would not be an effective tool in taking a stand against repetitive criminal activity.

In case of agglomerate punishment Paragraph 85. section (3) provides the opportunity to increase the penalty item according to section (2) — that is, the most severe one of the offenses in the agglomeration -- by half. But in case special repetition and agglomeration of offenses meet, double increase would be unjustified. Therefore the Proposal orders that if the perpetrator is a special repeat offender, in case of agglomeration the penalty item according to Paragraph 85. section (2) must be increased by half. But even in such case the penalty cannot exceed twenty years (Paragraph 40. sec. (2)).

Point 1. c) of the justification lists those cases when the Special Part gives orders about the particular repetition as qualifying circumstance. The orders of Paragraph 97. are not applicable to these.

3. Numerous penalty items of the Special Part determine loss of freedom ranging to one year, corrective-educational labor and monetary fine punishment as alternatives. It follows from the increasing of severity of the penalty items for particular repeat offenders that in the case of such a perpetrator there should be no way to select among alternative penalties, but the penalty item should be loss of freedom only. (The upper limit of this increases by its half according to section (1).)

4. Increasing the lower limit of the penalty items determined in the Special Part insures consistently severe evaluation of the special repeat offenders. Section (3) regulates this in a differentiated manner. In contrast with the upper limits, increase at the same extent would not be practical for the lower limits; the proper ratios are created by larger increases in the lower low limits and smaller extent of increases in the higher low limits.

5. Exclusion of the mitigation of penalty would not be practical for special repeat offenders either. Circumstances related to the offense's objective side, but also to the perpetrator's person (for example severe illness) may justify mitigation of the penalty. But section (4) establishes more severe conditions for this than those contained in Paragraph 87. section (2). Mitigation, the character of which is exceptional even otherwise, is in order

for special repeat offenders only in cases deserving particular consideration; thus it may be applied only very exceptionally even in comparison to the general conditions.

Paragraph 87. sections (3) and (4) make double or unlimited mitigation possible only in such unique cases in which usually the special repetition has no significance. Therefore different orders are not justified for these cases of mitigation.

Mitigation of the penalty must start out from the penalty item which provides guidance for the special repeat offender; thus more lenient penalty than the lower limit defined in section (3) can be meted out only within the framework of mitigating the penalty. But in case of applying Paragraph 87. section (2), the penalty can be made more lenient to the minimum extent defined by points a) through e) of this.

Orders Concerning Multiple Repeat Offenders

To Paragraph 98.

1. Paragraph 137. point 14. contains interpretive orders for the concept of multiple repeat offender. If the conditions defined in this exist, the perpetrator's person is dangerous to society to such an increased extent that beyond the legal disadvantage applicable against all repeat offenders, unique penal law tools are also necessary. Therefore the Proposal orders that loss of freedom of at least two years meted out to a multiple repeat offender must

be administered in penitentiary (Paragraph 42. sec. (3)), excludes the granting of conditional release (Paragraph 47. sec. (2) point a)), and provides no possibility for relief by law (Paragraph 102. sec. (3)). Restrictive confinement may be ordered against the most dangerous multiple repeat offenders according to Paragraph 78. section (1).

Besides this unique orders are also justified regarding the meting out of punishment. — The multiple repeat offender is not necessarily a special repeat offender; it is possible that the penalties defined in Paragraph 137. point 14. were not meted out for offenses of the same type or ones similar in character. But those more severe rules of meting out the penalty which Paragraph 97. determines for special repeat offenders are necessary for multiple repeat offenders also. Since the category of multiple repeat offenders is more dangerous than that of special repeat offenders, more lenient regulation than the one for special repeat offenders would be contradictory to itself. But in general more severe rules are not justified either; further increase in the limits of penalty items would lead to such excessive evaluation of the perpetrator's personal circumstances which could direct the meting out of penalty into an improper direction.

2. That rule of Paragraph 97. section (4), that mitigation of the penalty can take place only in a case deserving special consideration, is valid for the multiple repeat offender also. But further limitations are also necessary against these more dangerous perpetrators. Mitigation may extend only to the

minimum extent of the penalty item established in the Special Part for the offense. Thus the mitigation's consequence is that the increased low limit which governs multiple repeat offenders ceases (Paragraph 97. sec. (3)), and the penalty can be meted out within the framework of the penalty item established in the Special Part, but the low limits listed in Paragraph 87. section (2) are not applicable.

Effectiveness of Paragraph 87. sections (3) and (4) is not practical to exclude for multiple repeat offenders either, because their application is justified by such circumstances which generally are not influenced by the perpetrator's prior record.

Credit for Preliminary Custody

To Paragraph 99.

1. Part of the forced measures applicable during the penal process involve the denial of personal freedom (custody, preliminary arrest, temporary forced medical treatment). The Proposal designates these by the collective name of preliminary custody. Listing them in the law is not practical, it would unnecessarily stiffen the practice of applying the law.

The preliminary custody is not punishment. But since the perpetrator in preliminary custody is actually under circumstances similar to the execution of punishment, it would be unfair if the time spent in preliminary custody were not taken into consideration when the penalty is meted out. Counting

the preliminary custody [towards the penalty] serves to eliminate this.

The preliminary custody's duration must be counted towards loss of freedom, corrective-educational labor and monetary fine punishment. Counting it towards the latter is in order also if the monetary fine punishment is meted out as supplementary punishment. — It is according to the legal institution's purpose that the preliminary custody's entire time must be counted towards the penalties mentioned. Exclusion of the counting is not justified even in that case if the perpetrator's behavior hindering the penal process provided the reason for the preliminary custody.

2. It follows from the character of preliminary custody that when it is counted towards loss of freedom, one day of preliminary custody is equal to the same amount of loss of freedom.

In case of corrective-educational labor it must be taken into consideration that this is a more lenient type of penalty than loss of freedom. Therefore the Proposal takes the order contained in Paragraph 50. section (2) for basis; that is, in the calculation one day of preliminary custody is equivalent to two days of corrective-educational labor.

The order concerning the changing over of preliminary custody to monetary fine punishment is in harmony with the calculation used in changing monetary fine penalty to loss of freedom (Paragraph 52.): one day of preliminary custody corresponds to one daily item of monetary fine punishment. In case of supplementary monetary fine punishment the calculation regulated by Paragraph 55. section (2) must be applied in performing the changeover.

Chapter VI.

Relief from Disadvantages Connected to Previous Record

The various legal decrees attach disadvantageous consequences to the court's decision which establishes the penal law responsibility and metes out the penalty — to being sentenced. The Proposal contains the penal law disadvantages: a number of its orders attach more severe legal consequences to repetition. The effects of prior penal record on working rights are significant, but it also influences the practice of other rights also to which citizens are entitled.

The Proposal creates the possibility for the convicted person to be granted relief from the disadvantages attaching to a prior penal record and to participate in society's life again as a citizen with full rights.

In accordance with the penal law's purpose (Paragraph 1.) the Proposal keeps in mind society's protection and the education of those convicted when it regulates this relief, and besides this it also insures that the relief should not harm the rights of others. In the interest of giving validity to these requirements together, the Proposal regulates relief in a differentiated manner.

In defining the effect of relief (Paragraph 10.) the Proposal differentiates

between the penal law consequences attached to being sentenced and other legal consequences, and in regulating the method of granting relief (Paragraphs 101. through 104. and 106.) [it differentiates] by using the weight of the penalty meted out for the offense, as well as the convicted person's prior life and personality as basis. It also gives orders about the uniformity of granting relief (Paragraph 105.).

A record of penal matters is kept by the authorities about those who have been sentenced for offenses. Authorized persons may obtain permission from the record on penal matters about a citizen's prior penal record. The law decree which gives orders about the record of penal matters defines what sentencing must be kept on record and for how long. If being kept on record is terminated, the authorities proceeding in penal matters receive no information about having been sentenced. But regulation of the record of penal matters does not belong under the Penal Code, therefore the Proposal gives no orders about it.

Unique relief rules are justified in the case of persons of youthful age and soldiers. These are contained in Paragraphs 121. and 136. respectively.

Effect of Relief

To Paragraph 100.

1. Section (1) defines the area of the relief's effect. Being granted relief means termination of those disadvantageous consequences which are tied by the various statutes to having been sentenced — state law, governmental

law, labor law or cooperative law statutes. These legal consequences affect the citizens' participation in society's life, and those with penal records are deprived of certain rights, or are excluded from acquiring these rights. Such consequences are contained for example in Paragraph 4. section (1) of administrative order No 14. of the year 1977 concerning private craft industry, Paragraph 4. section (1) of administrative order No 15. of the year 1977 concerning private commerce, Paragraph 8. section (2) of administrative order No 30. of the year 1977 concerning fishing, Paragraph 4. section (1) point c) of regulation No 38/1973. (XII. 27.) MT [Council of Ministers] concerning certain questions of the employment situation of those working in government and in the administration of justice.

In accordance with the legal institution's purpose, the relief becomes effective as of the point of time of its granting. The relief does not restore an employment relationship or license lost due to having a prior penal record; the person granted relief becomes a citizen with full rights with respect to the future.

It follows from the fact that the Proposal extends the relief's effect to all other legal consequences with the exception of penal law consequences as is evident from section (3), that the statute cannot attach disadvantageous consequences to the sentenced person who has been granted relief.

2. Section (2) gives orders about the content of being granted relief. It

Insures the relief's goal that the person granted relief must be considered to have no prior penal record and he does not have to account for such sentences.

This order which entitles the person who has been granted relief to not disclose his penal record, would become ineffective if it appeared from the so-called official moral certificate made out for him that he had been sentenced. Where having no penal record has significance, the affected person must account for this circumstance by presenting his moral certificate; thus it follows from section (2) that the official moral certificate does not show the sentence for which relief has been granted. Since the relief does not extend over penal law consequences, the keeper of penal records informs the authorities proceeding in penal matters about all those sentences the presence of which on the record has not been terminated.

3. The purpose of granting relief is that the convicted person may again participate in society's life as a citizen of full rights. Therefore the relief extends over all those rights which affect the citizens' participation in society's life. However, it would be contrary to the purpose of relief if this would damage society's protection. Therefore section (3) excludes the penal law consequences from under the relief's effect.

The relief does not affect those disadvantageous consequences which the penal law attaches to having been sentenced. The law attaches disadvantageous consequences to having been sentenced only in the case of committing an additional offense, being sentenced once has no other penal law consequences

besides the penalty (and possibly measure) which was applied. In case of committing an additional offense society's protection desires that the court evaluate the earlier sentence when it metes out the penalty (Paragraph 83.), or -- if the conditions for this exist -- that it apply the more severe regulations against the perpetrator which refer to repeat offenders (Paragraph 137. points 12. through 14.).

The Method of Relief

To Paragraph 101.

Paragraph 101. lists three methods of granting relief.

Relief by Law

To Paragraph 102.

1. Relief by law takes effect upon the affected person's initiative, without separate steps being taken by the authorities and without examination of worthiness, due to the power of law, when the conditions defined by law exist. From this follows that relief by law extends only over relatively milder penalties.

a) In case of monetary fine punishment the relief becomes effective when the sentence becomes legally final ["rises to legal strength". Translator.]. From the place monetary fine punishment occupies in the Proposal's penalty system, from the character of the legal disadvantage involved in this penalty follows

that it is not justified to attach severe legal consequences to the monetary fine penalty with respect to being granted relief either.

Immediate relief by law is justified even if the court applies a supplementary penalty as independent punishment in place of the main penalty (Paragraph 88.).

b) If the court suspends the administration of loss of freedom, the probationary time established at the same time also represents the waiting time necessary for relief by law. That is, the goals of probationary time and of the waiting time for relief by law are essentially the same: to give the convicted person opportunity to provide proof of his rehabilitation by [demonstrating] his law-abiding lifestyle.

c) In case of corrective-educational labor the relief by law takes place on the day the penalty is completed, or its administrability ends. In general it would be unjustified if the convicted person would already be relieved, due to the strength of law, from the disadvantageous consequences of having been sentenced, already during the punishment's administration, because in this case the punishment would be carried out on a person with no prior penal record; on the other hand, prescribing additional waiting time after the punishment's administration would not stand in proportion with the severity of corrective-educational labor.

d) In case of administered loss of freedom significance must be attributed to the fact of whether the offense is felony or misdemeanor, and within the

latter category whether it was careless or intentional. In case of careless misdemeanor the Proposal attaches relief by law to serving the penalty or to the end of its administrability. Differentiated regulation according to the penalty's extent is not justified with respect to the character of careless offense.

Inasmuch as the loss of freedom was meted out for intentional misdemeanor, it is practical to tie relief by law to a deadline of three years following the punishment's completion or the end of its administrability.

e) With respect to administered loss of freedom meted out for felony the Proposal differentiates according to the penalty's extent. The waiting times must always be calculated from completing the penalty or from the end of its administrability. In case of penalty not exceeding one year the waiting time is five years, while for loss of freedom exceeding one year but no longer than five years it is justified to tie relief by law to a significantly longer deadline than the previous one, to ten years. Loss of freedom meted out in a duration exceeding five years for felony indicates so significant dangerousness to society that there can be no place for relief by law.

2. According to section (2) the relief does not take place or loses its effect with respect to suspended loss of freedom if the penalty's administration is ordered. This can take place during the probationary time or after its expiration if administration of the suspended penalty is ordered either because of

a. offense committed during the probationary time, or establishing belatedly that a reason existed which excludes the benefit of suspension, or because the convicted person severely violated the rules of patronizing supervision (Paragraph 91. sec. (1)).

The penalty must be considered as if originally it had not been suspended, in case its administration is ordered. This is valid for the relief also: the relief rules related to loss of freedom to be administered provide guidance for such penalty; therefore the relief which had possibly taken effect on the basis of section (1) point b) loses its effect.

3. The Proposal judges the multiple repeat offenders (Paragraph 137. point 14) more severely in the area of relief also; it excludes them from relief by law. In the case of such prior record it would not be proper to tie the occurrence of relief merely to the passing of time.

Relief by the Court

To Paragraph 103.

1. While the Proposal insures the possibility of relief by law only for certain categories of convicted persons, the possibility of relief by the court is open to all convicted persons — except to those sentenced to the death penalty or to loss of freedom for life.

An essential difference between reliefs by the law and by the court is that

besides successful completion of the waiting time, there is also another condition for relief by the court: finding of worthiness by the judge. The basis for this is that primarily those penalties belong the circle of relief by the court in which the offense's objective, or the perpetrator's personal dangerousness to society is of a more significant degree, thus the favorable spending of the waiting time cannot be the sole proof of the convicted person's rehabilitation, but this must be linked to also another condition. And in those cases when relief by the court may take place within a shorter deadline than relief by law, tying to further conditions is justified.

2. In cases of monetary fine punishment, corrective-educational labor, and also suspended loss of freedom, as well as administered loss of freedom meted out for misdemeanor the rules of relief by law are so favorable that in connection with these penalties relief by court is usually not necessary (except previous relief by court, regulated by the framework of Paragraph 104.).

In connection with administered loss of freedom not exceeding five years meted out for felony, the Proposal provides the opportunity for relief by the court through a shorter deadline than the one in relief by law.

In case of loss of freedom of definite duration exceeding five years meted out for felony there is no possibility for relief by law. The Proposal establishes the waiting time necessary for relief by the court in ten years. Further differentiation of the waiting time with respect to the extent of punishment does not appear necessary.

3. The situation is different if the convict is a repeat offender. In the interest of taking consistent measures against repeat offenders, the Proposal does not insure that favorable possibility for a repeat offender that the court could give him relief before the waiting time necessary for relief by law would expire. Therefore for repeat offenders section (2) excludes the application of section (1) points a) and b).

4. Exclusion of relief by the court would not be correct even for multiple repeat offenders; opportunity for this must be given in the interest of promoting [the process of] fitting into society. But the personality of such convict makes stricter evaluation necessary than is generally done. Section (3) regulates, with the expiration of what waiting time the granting of relief by court to a multiple repeat offender may be in order. Within this category differentiation is justified to that extent that the waiting time required for relief should be fifteen years in case of loss of freedom for determined duration exceeding fifteen years. If the multiple repeat offender's penalty was no more severe than loss of freedom for fifteen years, further differentiation according to the extent of penalty is unnecessary; the ten year waiting time is adequate.

5. Section (4) designates the viewpoints for judging worthiness. Individualization must be farreachingly realized in judging the convict's way of life. It must appear from the convict's entire way of life that he has regretted committing the offense and lived as it can be expected of all citizens. It

must also be taken into consideration when worthiness is judged whether the convict made reparations for the harm caused by his act. Naturally the harm may mean not only the causing of material damage. But making amends for the harm can be examined only in that framework, inasmuch as there was a way to make amends at all with respect to the character of the offense.

To Paragraph 104.

1. For cases of corrective-educational labor and suspended loss of freedom the Proposal insures the possibility of granting preliminary relief to the convict. The dangerousness to society of persons sentenced to such penalty, and the weight of their offenses also can be very different. It is therefore justified to link the granting of relief to the court's evaluation. The preliminary relief by court which the court may grant within the sentences meting out corrective-educational labor or suspended loss of freedom serves this end. Its condition is the convict's worthiness.

Differently from relief by court regulated in Paragraph 103., the Proposal provides no guidance for the judging of worthiness. The convict's personality, conduct of life must be taken into consideration in examining worthiness for preliminary relief also, but the offense's character, the penalty's extent also cannot be left out of consideration.

2. The preliminary relief is conditional, that is, it loses its effect if the corrective-educational labor is changed to loss of freedom or if

administration of the suspended loss of freedom is ordered. That is, in such case the assumption that the convict is worthy of being granted relief has been disproven.

Unity of Relief

To Paragraph 105.

From the fundamental goals of relief follows that relief can be only a whole, it cannot be realized in parts. It could hinder the implementation of relief by law or granting of relief by the court if even though the conditions for granting relief based on the main penalty existed, administration of the supplementary penalties has not yet been completed. The principle of the unity of relief is realized in this case, which is defined by Paragraph 105.

However, it is justified to make exceptions from the unity of relief. In case of suspended loss of freedom the monetary fine penalty does not exclude preliminary relief; that is, in the contrary case the convict otherwise worthy of being granted preliminary relief would suffer an unfair disadvantage. And the prohibitions of practicing an occupation and driving vehicles have such unique purposes that administering them does not stand in contrast with granting relief to the convict; thus relief by both the law and the court may take place during the administration of these supplementary penalties, they do not exclude the preliminary relief either.

Relief by Pardon

To Paragraph 104.

Relief by pardon differs from reliefs by law and by court in that it has no preconditions defined by penal law. According to the Constitution the right of pardon is practiced by the Hungarian People's Republic's Presidential Council.

Relief by pardon is possible in the forms of both, public amnesty, and individual pardon. In general, relief on the basis of individual pardon can take place if the convict appears worthy of relief in spite of the fact that one of the conditions necessary for relief by law or by court is missing.

Chapter VII.

Regulations Concerning Youthful Offenders

1. Chapter VII. contains the rules which differ from the general with respect to youthful offenders. In the battle against the actions contrary to penal law committed by youth between the ages of 14 and 18 years, the means of general child and youth protection by themselves are insufficient. Therefore according to the Proposal -- differently from those of childhood age (Paragraph 23.) -- perpetrators of such age owe penal law responsibility, and penal law penalties or measures can be applied against them.

2. The physical, intellectual and moral degree of development of 14 to 18 year old youth, as well as their social situation differ from those of adults. The penal law must also take this into consideration.

The primary purpose of applying penalty and measures to youthful offenders is education (Paragraph 108.), and for the most part the perpetrators must be held responsible according to more lenient rules than general. Thus certain penalties cannot be applied against youth (death penalty, loss of freedom for life, and confiscation of property: Paragraphs 99., 109., and 110.), or the sphere of applying them is narrower or in case of applying these more lenient rules apply to them (such are the loss of freedom, corrective-educational labor, monetary fine punishment, prohibition from participating in public affairs, and banishment: Paragraphs 110. through 116.).

The rules of relief from disadvantages tied to prior penal record are also more favorable for young people (Paragraph 121.). Restrictive custody cannot be applied against young people (Paragraph 78. sec. (1)) and a person of youthful age can be placed on probation according to more favorable rules (Paragraph 117.).

The educational character of regulations referring to young people is manifested in the unique grades of administering loss of freedom, and also in the fact that rearing in correctional institution can be ordered as a measure.

The Youthful Offender

To Paragraph 107.

1. Section (1) defines the concept of person of youthful age. It defines the low limit of youthful age in the perpetrator's fourteenth year of life. For the reasons for this, see Paragraph 23. dealing with childhood age.

The upper limit of youthful age is in harmony with other statutes, first of all with the orders of Ptk. Paragraph 12. section (2) concerning the age of minors. But youthful age is a penal law concept; a person of adult age due to marriage is can be a minor from the viewpoint of penal law.

2. Certain orders of Chapter VII. establish more lenient rules for people of youthful age who had not yet completed their sixteenth year of life when the offense was committed (see the orders concerning the upper limit for loss of freedom: Paragraph 110. sec. (3), Paragraph 120. sec. (1), corrective-educational labor can be applied only against a person of youthful age who had completed his sixteenth year of life at the time the offense is judged: Paragraph 113.)).

3. From the viewpoint of establishing youthful age the timepoint of committing the offense governs. From this follows that the penalties and measures must be carried out according to the rules applicable to people of youthful age even if the perpetrator has already passed his eighteenth year of life. But

this rule can be applied only between certain age limits according to the Proposal: Loss of freedom can be administered in the prison or jail for youthful offenders until the completion of the convict's twentyfirst year of life (Paragraph 111.); the perpetrator must be released from the correctional institution once he passes nineteen years of age (Paragraph 118. sec. (4)).

4. Section (2) builds the penal law orders concerning young people into the Penal Code organically. Usually the Proposal's orders are of general validity, referring to adults and youth alike. But there are also those orders in the General Part which are valid only for people of adult age. Thus for example the death penalty can be meted out only against a person who at the time of committing the offense had completed his twentieth year of life (Paragraph 30. sec. (1)). But the orders referring to youth cannot be applied to soldiers (Paragraph 122. sec. (3)).

The special rules of Chapter VII. precede the general orders: they exclude the application of those or permit them only with certain differences.

Application of Penalties and Measures

To Paragraph 108.

1. The general order about the purpose of penalty (Paragraph 37.) is valid for youth also. But for youth — even though the viewpoints of general prevention also must not be left out of consideration — the primary goal of applying

penalty and measure is education, individual prevention. This is expressed in the system of penalties and measures also.

2. The educational goal's primary nature is manifested in in the order of Paragraph 108. section (2): in the case of a young person primarily a measure must be applied, penalty only when application of a measure does not lead to the goal.

Special care must be used in evaluating whether it is absolutely necessary to sentence the young person to administered loss of freedom.

Penalties and Measures

To Paragraph 109.

1. Among the penalty types (Paragraph 38.) and measures (Paragraph 70.) according to the Proposal those cannot be applied to young people which would not have the necessary educational effect.

Paragraph 39. section (1) excludes the death penalty, Paragraph 110. section (2) [excludes] loss of freedom for life, and beyond this Paragraph 109. section (1) [excludes] the confiscation of property also.

2. According to section (2), rearing in a correctional institution is a unique measure of educational character applicable only to young people.

Loss of Freedom

To Paragraph 110.

1. According to the Proposal the lower and upper limits of loss of freedom applicable to young people are lower than general.

Loss of freedom for three months according to section (1) replaces the minimum extent of the legal penalty item determined in the Special Part, if that is higher than this. From this follows that Paragraph 87. section (2) points a) through d) dealing with the mitigation of punishment are not applicable to young people.

Section (1) becomes valid in harmony with the orders (Paragraphs 97. and 98.) referring to special repeat offenders and multiple repeat offenders. The shortest duration of a youthful aged special repeat offender's loss of freedom is always six months (Paragraph 97. sec. (3) point a)), and Paragraph 97. section (4) also refers to him.

More lenient penalty than loss of freedom for six months cannot be meted out youthful aged multiple repeat offender even if Paragraph 87. section (2) is applied in an exceptional case (Paragraph 98. sec. (2)).

2. Sections (2) through (4) determine the upper limit of loss of freedom which can be meted out to young person. These limits replace the upper limits of legal penalty items determined in the Special Part.

According to the Proposal loss of freedom for life cannot be meted out to a young person. Otherwise the upper limit of loss of freedom depends on the original penalty item's upper limit and on the perpetrator's age. The upper limits applicable to young people who have not completed their sixteenth year of life are lower.

3. Since the upper limit of loss of freedom applicable to young person replaces the original penalty item's upper limit, those -- according to section (5) -- also govern from the viewpoint of calculating the deadline for lapse of punishability (Paragraph 33.).

The upper limit of the penalty item referring to special repeat offenders of youthful age must also be calculated by taking Paragraph 110. sections (2) through (4) as foundation.

4. Paragraph 120. section (1) determines the limits of agglomerate and overall penalties.

To Paragraph 111.

1. The viewpoints corresponding to the age characteristics of young people must be given validity even during the administration of loss of freedom.

That system of the degrees of loss of freedom which the Proposal determined for adult age people, would not be practical for young people. Young people can be divided into two large groups from the viewpoint of trainability. The methods of administering the penalty must also be shaped according to this.

Therefore establishment of two degrees for administering loss of freedom is justified for young people. The Proposal calls these young people's prison and young people's jail.

2. Section (2) determines three categories of penalty to be administered in the young people's prison.

Considering the sentencing practice, that young person who has been sentenced to loss of freedom for two years or longer duration for felony, has in general committed an offense of such significant weight which indicates increased dangerousness to society.

For a young repeat offender the more significant degree of personal dangerousness to society justifies implementation in the more severe degree. But carrying out loss of freedom of short duration also in the more severe degree would not be practical. The Proposal determines that shortest duration in one year in case of which the repeat offender's penalty must be administered in prison for young people.

Even though rearing in a correctional institution is not a penalty but a measure and does not involve the establishment of being a repeat offender, from the viewpoint of the degree of administering the penalty it is justified to judge it the same as loss of freedom, because according to experience the personality of such young person does not show essential differences from one on whom loss of freedom has been carried out. From this follows that assumption that earlier rearing in a correctional institution can be the basis for

administering loss of freedom in prison for young people only if both the previous and the new offenses were committed intentionally.

3. In case the conditions defined in section (2) are missing, loss of freedom meted out to a young person must be administered in the jail for young people.

4. According to the Proposal, loss of freedom must be administered according to the rules for young people even if the perpetrator had completed his eighteenth year of life. But if he has also reached his twentyfirst year of life, application of the general rules — which also apply to adults — is justified for carrying out the punishment. In this case it must be determined in what degree of administration of penalty — penitentiary, prison or jail (Paragraph 41. sec. (1)) must the penalty be administered in the future.

Otherwise in such cases the court may apply Paragraph 45. section (2), or the order of Paragraph 46.

Granting of Conditional Release

To Paragraph 112.

The Proposal differentiates the rules of granting conditional release to young people according to the loss of freedom's degree of administration. In granting conditional release from loss of freedom administered in prison for young people it uses as foundation the regulation governing prison, while in case of young people's jail [it uses] the regulation for jail (Paragraph 47. sec. (2) points b) and c)).

The general reasons which exclude the granting of conditional release (Paragraph 47. sec. (3)) -- in the absence of orders to the contrary -- also apply to young people.

Corrective-Educational Labor

To Paragraph 113.

The Proposal forbids the application of corrective-educational labor to a young person who has not yet completed his sixteenth year of life, because such young people usually have no employment relationship, or have only had it for a very short time.

Monetary Fine Punishment

To Paragraph 114.

1. The monetary fine punishment desires to strike the offense's perpetrator with property disadvantage. Since young people usually possess no independent property, monetary fine punishment (either as main or as supplementary punishment) can be meted out according to the Proposal if the property disadvantage affects the young person himself and not someone else, for example relatives.

2. Section (2) is a partial exception from the orders of Paragraph 52. Unpaid monetary fine punishment and supplementary monetary fine punishment must be collected, or its collection must be attempted.

Prohibition From Participating in Public Affairs

To Paragraph 115.

It is necessary to prohibit young people from participating in public affairs only if they are sentenced to a relatively long duration of loss of freedom. In such cases the supplementary punishment or part of it is usually carried out after the perpetrator completes his eighteenth year of life. Participation in public affairs has practical significance mainly in the case of adults.

Banishment

To Paragraph 116.

The appropriate family environment helps young people to develop in the proper direction and to fit into society. A person of youthful age cannot be deprived of such environment even by banishment. This represents no obstacle to banishing him from a locality where he does not live with his family.

Placement on Probation

To Paragraph 117.

1. Section (1) makes it possible in broader circles than the general rules (Paragraph 72, sec. (1)) to be placed on probation. It is not practical to

exclude a young person from being placed on probation even in case of an offense to be punished by punishment more severe than two years loss of freedom, if other conditions of this exist. But a young repeat offender (Paragraph 72. sec. (2)) cannot be placed on probation.

2. Differently from Paragraph 72. section (3), the duration of probationary time for a young person placed on probation is always one year. The personality of young people develops faster, and this much time is sufficient to gauge whether placement on probation reached its goal.

The probationary time may also continue after the perpetrator completes his eighteenth year of life.

3. A young person placed on probation stands under patronizing supervision (Paragraph 119.). The behavioral rules of patronizing supervision may in part deviate from the general rules (for example in case of young people requiring education for handicapped children). This must be regulated by lower level statutes.

4. The probationary time can be extended in accordance with Paragraph 73. section (1). If the court terminates the probation (Paragraph 73. sec. (2)), according to Paragraph 117. section (3) it may mete out not only a punishment, but against a young person it may also order the application of rearing in a correctional institution. However, in general this is not practical after the perpetrator completes his eighteenth year of life.

Rearing in Correctional Institution

To Paragraph 118.

1. Rearing in correctional institution is a measure applicable only to young people. By ordering it, the young person is taken out of his environment until then, and is placed into an institution where care is taken to educate and train him.

Lower level statutes provide detailed regulations about the order of administering the rearing in correctional institution.

2. According to section (2) rearing in a correctional institution is a measure of indeterminate duration, but lasting for at least one year. But its indeterminate nature is only relative -- attention being given to section (4).

3. Section (3) regulates the temporary and permanent release of young people from the correctional institution. The court makes the decision about this.

4. According to section (4), it is not an obstacle to continuing the training in correctional institution if the perpetrator is more than eighteen years old, but his measure may last at the latest until completion of the nineteenth year of life. It is in the perpetrator's interest that he should not interrupt his studies begun in the institution. Therefore the Proposal makes it possible that based on the court's order the rearing in correctional

institution should last until the end of the given academic year even if in the meanwhile the perpetrator has already completed his nineteenth year of life.

If the perpetrator is already more than eighteen years of age when the offense is judged, in general it is not practical to order rearing in a correctional institution for him, because — in suite of Paragraph 118. section (2) — it would last for a time shorter than one year, and this time is not enough for successful rearing.

Patronizing Supervision

To Paragraph 119.

Ordering patronizing supervision for an adult sentenced to suspended loss of freedom, placed on probation or granted conditional release is not mandatory, but is a possibility depending on the court's evaluation (Paragraph 89. sec. (6), Paragraph 72. sec. (4), Paragraph 48. sec. (3)). For young people the Proposal considers it necessary to order this measure in all cases, and therefore it does not leave this to the court's evaluation in each case.

Agglomerate and Overall Penalty

To Paragraph 120.

1. Keeping Paragraph 110. sections (2) through (4) in mind, Paragraph 120.

section (1) establishes the limits for agglomerate and overall penalties. Otherwise the general regulations for agglomerate punishment and overall punishment are valid also in cases involving young people.

2. Paragraph 120. section (2) regulates the way in which rearing in a correctional institution and loss of freedom are included in the overall penalty. It would not be practical if a young person who has been sentenced to loss of freedom, after completing it would be sent to a correctional institution or vice versa. Therefore in case rearing in correctional institution and administered loss of freedom meet, the loss of freedom must be carried out.

The overall penalty must reach, but does not necessarily have to exceed the extent of loss of freedom meted out in the basic case. But according to the circumstances in the given case the court — taking into consideration the rearing in correctional institution which is indeterminate in duration — may extend the duration of the loss of freedom by at the most one year, if this is necessary in the interest of achieving the punishment's purpose.

3. Rearing in correctional institution cannot be combined into one overall penalty with corrective-educational labor, and simultaneous or consecutive execution of these is also excluded. In case these two legal disadvantages meet, only one of them can be carried out. If the court orders that rearing in correctional institution be carried out, Paragraph 118. governs its duration.

In case the corrective-educational labor is carried out, the court may extend the length of the punishment meted out, but this is not mandatory. In case the duration of the corrective-educational labor is extended, it still cannot exceed the overall penalty's extent (Paragraph 49. sec. (4))

4. If someone committed an offense while of youthful age and also as an adult, the agglomerate and overall punishment's limits are determined jointly by the orders concerning youthful and adult age offenders (Paragraph 110. sections (2) through (4) govern offenses committed while of youthful age).

The legal consequences must be determined according to the rules for adults. Pearing in correctional institution as "homogeneous measure" cannot be ordered if the loss of freedom meted out as agglomerate punishment or overall punishment must be administered in penitentiary, prison, or jail and not in the young people's prison or young people's jail, etc.

Relief from Disadvantages Connected to Previous Record

To Paragraph 121.

1. The rules for relief by law or by court are more favorable for young people than the general rules are. This makes it easier for the young people to fit into society.

According to Paragraph 121. section (1) point a) the young person sentenced to suspended loss of freedom is relieved from the disadvantages tied to prior

penal record already the day the sentence becomes legally final. But with respect to Paragraph 100. section (3) there is no obstacle for the court to order administration of the suspended penalty for offense committed during the probationary time (Paragraph 91. sec. (1) point b)).

The conditions of relief governing loss of freedom of shorter duration (Paragraph 121. sec. (1) points b) and c)) are also more advantageous to young people than the general rules (Paragraph 102. sec. (1) points d) through f)).

7. According to Paragraph 121. section (2) the court may grant relief to the young person immediately after completing the loss of freedom, that is, without waiting for the waiting time determined in Paragraph 103. to pass.

In other respects the rules of relief also refer to young people, with differences in interpretation. Such difference is for example that in case suspended loss of freedom is weeded out, the young person cannot be granted preliminary relief because relief takes effect by power of the law.

Chapter VIII.

Regulations Concerning Soldiers

The Proposal considers the material penal law orders concerning soldiers to be an organic part of the Penal Code, which require regulations differing from or supplementing the general only in some parts. Within the General Part Chapter VIII. contains the general rules referring to soldiers, while the military offenses compose Chapter XX. in the Special Part.

Chapter VIII. establishes unique rules for the perpetrator (Paragraph 122.), for the obstacles to being held responsible by penal law (Paragraphs 123. through 125.), for the penalties and measures (Paragraphs 126. through 135.), as well as for relief from disadvantages tied to having a prior penal record (Paragraph 136.).

The Perpetrators

To Paragraph 122.

1. The Proposal directly determines the personal authority of material penal law orders concerning soldiers. In the penal law's application persons performing service in the actual effective force of the armed forces and in professional staff at the armed bodies must be considered soldiers. The reason for the distinction is that in the armed forces (in the people's military forces and in the border guard) the circle of those who belong to the actual effective force is broader than of those who perform service in the armed bodies (police, workers' guard and the body for administering punishments [prison guards]).

In the armed forces the following belong to the actual effective force: those in the professional and in continuing service staffs, enlisted men, reservists performing service, and students of military educational institutions (law No I. of the year 1976, Paragraph 33.). In contrast with this, in general only persons of the professional staff belong to the actual effective force of armed bodies.

The Proposal considers those to be soldiers also in the penal law's application, who perform reserve military service at other than the armed forces. That is, those people with military obligations who are reserved for the police force, for the penalty administering body and for the national firefighting force perform their reserve military service at these bodies (order No 6/1976. (III. 31.) MT Paragraph 44. sec. (1)). Besides this the opportunity exists to perform reserve military service at other organs also, determined by the minister of defense (law No I. of the year 1976, Paragraph 40. sec. (1)).

2. The Proposal starts out from the principle that regulations of the penal law in general also extend to soldiers. But this does not exclude the employing of some such orders which can or must be applied instead of the general rules. These orders are justified by the deviation of the service conditions of armed forces and bodies from the general living conditions, by the characteristics of the service, by the stricter obligations deriving from the service conditions. The separate rules are valid for those who are soldiers at the time the offense is committed. But when applying the legal disadvantages, the condition at the time of judgment must also be taken into consideration.

3. As a matter of exception, there may also be people of youthful age among the soldiers. Due to their suitability for military service, these are intellectually and physically close to people of adult age, with whom they also have identical rights and obligations. Therefore the penal law orders

referring to people of youthful age cannot be applied to them. This is in harmony with that service order with which it would not be compatible if a soldier of youthful age stood under the effect of orders different from the other soldiers; this would break up the uniformly regulated responsibility system.

4. The unique legal topic of military offenses is the service order and discipline which insures special rights directly only to the soldier and burdens only him with special obligations. From this follows that only a soldier can commit a military offense. By culprit Paragraph 19. of the Proposal means not only the independent culprit but also the co-culprit, that is, persons committing a military offense jointly can be co-culprits only if they are soldiers. However, anyone can be participant (instigator or accessory before the fact) of a military offense.

Reasons Excluding Punishability

To Paragraph 123.

1. The service order is built on strict subordinate and superior relationships. The subordinate is obligated to carry out the superior's order, in the opposite case he owes penal law responsibility. Therefore it is an obstacle to punishability if the subordinate accomplishes an offense by carrying out an order.

It can happen that the subordinate carrying out the order knows that he is committing an offense by carrying out the order. In such case the rules of service provide for the possibility of refusing to carry out the order. Therefore it would be unjustified to insure freedom from punishment in case an offense is committed under orders.

2. The offense committed on the basis of an order can also be considered as an act caused by the superior giving the order to be carried out by someone else. Since the subordinate is obligated to carry out the order, he cannot examine the justifications for it, the superior giving the order bears the responsibility for the offense accomplished by carrying out the order, and does so according to the rules valid for the perpetrator.

3. Considering its severity, the offense against the service order and discipline — in case of identical behavior of committing it — can be violation of discipline or offense. In case of violation of discipline the disciplinary process belongs within the superior's authority. Even among the behaviors qualified as military misdemeanors, the appropriate commander who is most likely to best know the circumstances is able to decide against whom it is sufficient to apply disciplinary punishment. In such case he does not file a report but metes out discipline and by doing so he excludes punishability for military misdemeanor. But the commander in authority has the opportunity to do this exclusively in the case of military misdemeanor. Other misdemeanors due to their character, military felonies due to their weight

require that the decision should not be made within the commander's authority in judgments within the disciplinary legal area.

Reason for Ending Punishability

To Paragraph 124.

After the end of his service relationship the perpetrator leaves the area of military service and by this his person can no longer represent danger to the military discipline. Therefore the culprit cannot be punished if one year has passed after his leaving the service. The punishabilities of the instigator as well as of the accessory before the fact also cease at that time, regardless of whether he is a soldier or not, whether his service relationship exists or not, because after the culprit's punishability ceases it would be unfair to proceed against the participants.

But it does not shorten the time for lapse if the instigator's or the accessory-before-the-fact's service relationship ends, because the special punishability obstacle is exclusively the function of the culprit's service relationship. Thus if judging of the military misdemeanor takes place one year after the instigator leaves service, the general time lapses are valid for all perpetrators.

The special reason which ends punishability is limited to military misdemeanors. The military felony's dangerousness to society exceeds that extent

which would justify the application of more favorable orders compared to the general ones, to soldiers.

Judging of Offense Within the Disciplinary Authority

To Paragraph 125.

The basic regulations of armed forces and armed bodies present the prospect of holding those responsible by disciplinary procedure who violate the service order and discipline. Different types of disciplinary acts can be applied as discipline. There are also some among these which can also be meted out for offense as main or supplementary penalty as a result of the penal procedure. This overlap is one of the justifications that disciplinary discipline can also be used against a soldier instead of penalty.

In connection with offenses committed by soldiers also, it must be examined to what specific extent the act is dangerous to society. During this it may come up that there is an obstacle to holding the perpetrator responsible by penal law because the act's dangerousness to society is small, or has vanished. In these cases, simultaneously with ending the proceeding, the orders related to reprimand (Paragraph 71.) can be applied in case of a soldier also. It provides the possibility of further differentiation that in case of lower extent of dangerousness to society, instead of penalty, disciplinary discipline can also be applied against a soldier. In general this is a more severe sanction than reprimand, therefore it is applied when the specific dangerousness to society exceeds the extent written in Paragraph 28. and in Paragraph

36. by somewhat, or is of such degree that even the meting out of disciplinary discipline is sufficient. From this follows that during the judging of an offense the disciplinary discipline can be applied exclusively instead of penalty. But the order in Paragraph 125. cannot be applied when a reason which excludes or terminates punishability exists.

That intertwining responsibility system in which on the basis of the law-braking behavior's concrete dangerousness to society the disciplinary or penal goal can be reached by discipline, discipline applied instead of penalty or penalty, is an accompaniment of the military service conditions. It happens particularly in the case of military offenses that identical or similar committing behaviors lead to significantly different consequences. For example violations of obligations committed in service can be of such light weight that they can be judged by discipline, but on some occasions the punishment's goal can be achieved only by severe penalty. This gradual nature has such significance that penalty can be meted out for military misdemeanor only if the commanding officer has filed a report with the authorities. The Proposal limits the possibility of using disciplinary discipline substituting penalty for misdemeanors. The abstract dangerousness of felonies to society is of such weight that the punishment's goal cannot be reached by simple disciplinary discipline. But in the case of misdemeanor it is not necessary to distinguish according to whether military or nonmilitary misdemeanor was accomplished.

Application of the Death Penalty

To Paragraph 126.

In contrast with Paragraph 39. section (1), the death penalty can be used against a soldier even for offense committed prior to completing his twentieth year of life. Particularly serious offenses can also be committed under military service conditions. Judging these it would be difficult to distinguish according to whether the perpetrator had completed his twentieth year of life or not. It must therefore be made possible to apply the death penalty also to soldiers between the ages of 18 and 20 years. But it emphasizes its exceptional character with great weight that its application can take place only if the offense severely harms the military interests.

Persons under 18 years of age can perform military service only in exceptional cases. When judging the offenses committed by them, meting out the most severe penalty cannot take place because society's interests do not call for it. By the way, this is in harmony also with the international agreements.

Administration of Loss of Freedom in Disciplinary Battalion and in Military Stockade

To Paragraph 127.

1. It is practical to administer loss of freedom under such conditions to soldiers who remain in the service even after serving their punishment

that the rules of administering the penalty should differ from the general only to the necessary extent. Such are the disciplinary battalion and the military stockade, where the convicts remain under military living conditions and the convicts' education is insured by taking away their freedom, by military training and by making them perform jobs of military character.

Administration of loss of freedom in disciplinary battalion or in military stockade is mandatory if the convict can be kept in the service considering the penalty's extent, the remaining balance of his service time, and the severity and character of his offense.

Loss of freedom meted out to a soldier in the enlisted ranks, not exceeding two years in duration can be administered in disciplinary battalion. The Proposal makes a distinction according to in what degree the loss of freedom would have to be administered on the basis of the general rules. If according to Paragraph 43. the loss of freedom's degree of administration would be prison, the penalty not exceeding two years is administered to a soldier in the enlisted ranks in disciplinary battalion. But inasmuch as the conditions exist for using jail according to Paragraph 44., the soldier in the enlisted ranks is sent to disciplinary battalion if the loss of freedom exceeds six months but does not exceed two years.

Loss of freedom can be administered in military stockade if according to the general rules the degree of administering the penalty would be jail. Inasmuch as this condition exists, loss of freedom not exceeding one year in the case

of professional and continuing service soldier, and not exceeding six months in the case of soldier in the enlisted ranks must be carried out in military stockade.

In judging whether the conditions exist for administration in disciplinary battalion or in military stockade, attention must also be paid to Paragraph 45. section (2).

2. Legal consequences attach to the degree of administering the loss of freedom, among these the possibility of being granted conditional release is particularly significant, which is regulated by Paragraph 47. section (2) in a differentiated manner according to the degree of administering the penalty. Paragraph 127. section (2) gives orders about to which degree the disciplinary battalion and the military stockade correspond from this viewpoint. The disciplinary battalion corresponds to prison or jail according to whether the convict's loss of freedom would otherwise have to be administered in prison or jail. From the viewpoint of the degree of administering the penalty, the military stockade always corresponds to jail.

3. If the convict's service relationship ends either before or during the penalty's administration, according to the regulations of section (2) the loss of freedom must be administered, or its administration continued in prison or in jail.

Overall Penalty

To Paragraph 128.

It may happen with a soldier also that he was sentenced in more cases and his penalties must be included in an overall penalty according to Paragraph 92. From this viewpoint it is immaterial whether he committed the offenses which form his penalties' foundation as a soldier or as a civilian person. The contents of Paragraph 127. must also be examined when administering the loss of freedom meted out as overall penalty, and if the convict can be kept in the service with attention to the penalty's extent and also to other viewpoints, the penalty must be administered in disciplinary battalion or in military stockade. Thus the soldier can also continuously complete his military service if he was given a penalty for his offenses committed prior to entering service, and after entering service he commits additional offenses for which he is sentenced to loss of freedom. Otherwise the general rules of including in overall penalty are to be applied in the cases of soldiers also.

Exclusion of the Application of Corrective-Educational Labor

To Paragraph 129.

Under military service conditions corrective-educational labor cannot be carried out because the soldier does not stand in an employment relationship and receives no wages for work. Therefore when the penalty is meted out, corrective-educational labor cannot be applied against a person performing

military service. But there is no obstacle to applying this penalty type if in the meanwhile the perpetrator's service relationship ended, and exceptionally there isn't any also in the case if the service relationship must be terminated as a consequence of the sentence.

Supplementary Military Penalties

To Paragraph 130.

1. The level of rank has particular significance in military service. Besides the various service rights, society's recognition also attaches to these. All these things obligate the wearer of rank that his behavior should satisfy higher requirements. The soldier who commits an offense also injures or endangers the respect of his rank. This also must be taken into consideration when judging his offense and it must be decided according to this whether it is necessary to apply military supplementary punishment against him also. But this can take place only if the court did not apply prohibition from participating in public affairs, because this already includes also the most severe military supplementary punishment, loss of rank.

2. Among military supplementary penalties the loss of rank as well as termination of the service relationship are of such severity in their effect that they are also equivalent to other penalties, therefore on occasion these can also be used independently.

Loss of Rank

To Paragraph 131.

Loss of rank is the most severe military supplementary punishment. It is used if the character and weight of the offense committed by the soldier is such that it makes the perpetrator unworthy of wearing the rank. In case prohibition from participating in public affairs is applied, loss of rank does not need to be specified separately.

Termination of the Service Relationship

To Paragraph 132.

It can happen in the case of professional soldier or one in continuing service staff that the character of the committed offense does not make it possible to keep the soldier in the service. At such time instead of loss of rank termination of the service relationship can be applied as supplementary punishment or independently, instead of main penalty. When this penalty is applied, the perpetrator keeps his reserve rank and thus later — in case of need — his learned military knowledge can be used.

Decrease of Rank

To Paragraph 133.

1. For the case when even though the soldier's offense involves injury to

the respect of the rank he wears but not to such extent that his loss of rank would also have to be declared, the Proposal specifies decrease of rank.

Decrease can be accomplished not to just any, but only to the next lower rank; from this viewpoint that rank must be taken for basis which is worn at the time the offense is judged, not the one worn at the time the offense was committed. That is, decrease from the rank worn at the time of committing would involve unjustifiably severe effects in case of promotion in the meanwhile.

2. Simultaneously with the decrease of rank the court must also give orders about how much time the convicted person must spend in the lower rank. Section (3) determines the shortest and longest durations of this. Decrease for shorter than one year's duration does not seem to be an effective supplementary punishment, but duration exceeding two years would be such a lasting legal disadvantage which would not stand in proportion with the supplementary punishment's purpose. These limits provide the opportunity for the court to mete out the supplementary punishment in an individualized manner.

The determination of time to be spent in a lower rank does not exclude the convicted person from being promoted out of turn into higher rank (legal decree No 10. of the year 1971., Paragraph 12. sec. (3)).

Extension of the Waiting Time

To Paragraph 134.

The mildest military supplementary penalty can be applied to those for whom probationary time is prescribed for advancement into the next rank. The penalty begins when the waiting time prescribed for the rank ends. Thus it is not practical to apply it when a long time is necessary to reach the next rank anyway. This supplementary punishment also does not hinder extraordinary promotion.

Placement on Probation

To Paragraph 135.

The general orders concerning placement on probation are applicable to soldiers also. But in the case of a soldier in the enlisted ranks — taking into consideration the length of time in the service relationship — it must be ignored that the duration of the probationary time is determined in years. It seems practical for determining and for observing the behavioral rules that in case of a soldier in the enlisted ranks placement on probation should last until termination of the service relationship. But taking into consideration that any short length of time would not be sufficient to judge whether the punishment has reached its goal, the probationary time cannot be less than six months.

Relief from Disadvantages Connected to Previous Penal Record

To Paragraph 136.

The Proposal extends its regulations contained in Paragraph 104. concerning preliminary relief by court to those military convicts for whom the court ordered that loss of freedom must be carried out in disciplinary battalion or military stockade. For the most part, military or other such offenses form the basis for such penalties which were committed under military living conditions, involving increased responsibility. In these cases it is fair that the convicts should be relieved from the disadvantages tied to prior penal record after serving their punishment. Exceptionally those soldiers may also be granted relief who committed the offense not in connection with the service relationship, but are worthy of relief by taking all circumstances into consideration.

It can happen that due to illness or other reason the convicted person is released from military service before serving his penalty in the disciplinary battalion or military stockade, and therefore the loss of freedom must be continued elsewhere. It would be unjustified to change the regulation concerning relief because of this. Thus the relief in such cases also takes effect on the day the punishment is served or when its administrability ceases.

The effects of supplementary military penalty may also last for a longer time. It would be unfair if this would delay the relief. This is why it must be declared that such supplementary punishment does not hinder relief.

Chapter IX.

Interpretive Regulations

Interpretation of the concepts occurring in the Proposal is the task of the authorities proceeding in penal matters, during the law's application. In general, the legal concepts must be interpreted according to their everyday meaning. But in wording penal law regulations, the Proposal cannot give up the use of some unique penal law concepts. Through these the penal law regulations can be defined more precisely and unambiguously, and legal construction, simplification viewpoints also speak in their favor. In the interest of uniform interpretation of the Penal Code, the Proposal defines the contents of these concepts in interpretive regulations. This interpretation is binding on the authorities proceeding in the application of the law.

The Proposal contains legal interpretations in several places, thus for example in Paragraph 107. it defines the person of youthful age, and in Paragraph 122. the concept of soldier. Chapter IX. includes those interpretive regulations which define the concepts occurring in the General Part or in several chapters of the Special Part. Concept definitions valid only for one chapter of the Special Part are given by the Proposal at the end of the individual chapters (Paragraph 191., Paragraph 210., Paragraph 315., Paragraphs 333. and 367.).

To Paragraph 137.

1. The official person possesses increased penal law responsibility within the sphere defined by the Proposal, or enjoys increased penal law protection.

The Proposal connects the concept of official person to his activity of public authority character. According to the modern constitutional concept, public authority activity materializes in the activities of four types of organs: public representation, judicial, prosecutorial, and national government organs. Besides these the Proposal also includes under the concept of official person those persons who perform governmental tasks at other organs, in the name of the state.

a) A member of public representation organ is official person. Public representation organs are: the national assembly, the Presidential Council of the Hungarian People's Republic, and the councils. Thus the national assembly representative and the council member are official persons.

The judge is an official person, namely the professional judge as well as the public juror who participates in sentencing.

The social organs which also possess license from the public authorities to judge legal disputes, minor law violations are: the social courts, the labor matter and the cooperative decision committees.

The social courts are elected organs of the workers, their task is to judge

cases belonging within their authority (law decree No 24 of the year 1975). .

The committee to decide labor matters is formed of the enterprise's appointed or designated workers. Its task is to decide debates which occur between the employees and the enterprise, in connection with rights and obligations deriving from the labor relationship (law No II. of the year 1967). The cooperative decision committee is a committee selected by the membership meeting from the cooperative's members. Its task is: to decide the debate between the cooperative and its member in connection with the cooperative member's rights and obligations, and further between the cooperative and its employee in connection with the rights and obligations deriving from the employment relationship, and to require reimbursement for damage caused by the cooperative to its member (law No III. of the year 1971).

With respect to the character of their activity it is justified that members of the social court, labor matter and cooperative decision committees should bear increased penal law responsibility and should be entitled to increased penal law protection. Therefore according to the Proposal they are official persons.

b) The national governmental organs are executive, regulative organs which practice public authority. On the one hand they conduct organising-supervising activity and apply the generally mandatory national regulations to individual cases (executive activity), on the other hand in the interest of carrying out tasks designated in the resolutions of popular representation organs they themselves also determine general behavioral rules.

According to the Proposal official persons are those persons among the ones performing service at the popular representation, national governmental organs, courts and prosecutors offices whose activity is part of the organ's designated operation.

Whose activity is part of the organ's designated operation cannot be defined in general terms, therefore it is to be examined separately in each case. Thus for example the office helper of the town council who delivers summonses in tax matters is official person, since this job of his is part of the national governmental organ's designated activity. On the same basis the office worker of a council or court who does docketing is official person, as are the recorder at the court or in the prosecutors office, the judicial expert appointed within a penal procedure, head of an institution which serves to carry out rearing in a correctional institution, as well as also the civilian employee working in the administration of penalty, directing the employment of convicts.

c) Besides the persons mentioned in subpoints a) and b), the Proposal considers those official persons who perform national governmental tasks.

In general the national governmental tasks are carried out by national governmental organs. National governmental tasks are: establishing the rights and obligations which affects the citizens or other organs, certifying data for the citizens or for other organs, keeping records which affect the citizens or other organs.

But tasks of national government are conducted not only at national governmental organs. The public authority character of the tasks justifies that a person performing national governmental tasks at organs not listed in subpoint b) (economic operating organs, social organs, armed forces and bodies, in educational, health care institutions, etc.) must also be considered official person.

Thus for example the district doctor is performing a national governmental task when he enrolls people in the sick inventory who receive sick pay or when he issues proofs and certificates, and in such capacity he is an official person. The educator's main activity is to teach, but when he fills out the report card or participates in the enrollment committee he performs national governmental tasks.

Members of the popular control committee, when they perform specific control tasks on the basis of assignment received from the popular control committee, are performing national governmental activity.

Volunteer policemen and border guards provide assistance in performing national security, crimefighting, public order protecting, traffic directing, public regulatory tasks. The volunteer policeman and volunteer border guard are official persons during the performance of their service (order No 26/1975. (X. 15.) MT).

Worker guards also perform tasks in the protection of public order. In this area of their activity they are official persons.

2. The Proposal defines the concept of national order in a broader area. It includes here not only the public representation, national government, judicial and prosecutorial organs which conduct public authority activities, but also the state's economic operating organs (for example national enterprise) and all other national institutions (school, hospital etc.).

3. Due to the increased dangerousness to society of the method of committing, the Proposal considers commission with arms or while armed as aggravating qualifying circumstance for several offenses. The Proposal defines the concept of commission with arms more strictly in some respects than its interpretation in the public's language, and more loosely than others. The definition is stricter in the sense that other than firearms, it excludes the hitting, cutting, piercing weapons from armed commission. At the same time this concept is broader because it also includes those cases when the perpetrator keeps explosive materials in his possession. The explosive material is equipment of destructing effect, effective also at a distance; its dangerousness supersedes the other weapons used in the earlier interpretation. From the viewpoint of establishing armed commission it is immaterial for what purpose the perpetrator had the firearm or explosive material in his possession.

The objective condition for establishing commission while armed is that the perpetrator has in his possession equipment suitable to end life, and its subjective condition is that this is done in order to overcome or hinder

resistance. The equipment suitable to end human life can be any kind of weapon, explosive material, but also it can be equipment serving other purposes (for example hammer, pickaxe).

4. The Proposal defines the concept of property disadvantage in this chapter. The content of property disadvantage is broader than the penal law concept of damage, but narrower than its civil law concept.

Paragraph 333. point 2. of the Proposal defines the penal law concept of damage. According to this damage is decrease of value caused in the property by the offense. The spectrum of the civil law concept of damage is broader than this. That is, according to Paragraph 355. section (4) of the Ptk., within making reimbursements for damage, those decreases in value suffered by the damaged person's property and those property advantages lost, as well as those reimbursements for damage or costs must be made which are necessary to decrease or eliminate the property and non-property related disadvantages suffered by the person suffering the damage.

In judging the dangerousness to society of offenses against property the primary definitive factor is the property value decrease which occurred due to the offense. But the degree of dangerousness to society of certain offenses is not reflected faithfully in the property value decrease in itself which has taken place (causing public endangerment: Paragraph 259., disturbing the operation of a plant of public interest: Paragraph 260., unfaithful management: Paragraph 319., negligent management: Paragraph 320.). In the

proper evaluation of these actions the property advantaged lost due to the offense must also be taken into consideration, which may possibly well exceed the actually incurred damage. Lost property advantage is that value by which the damaged party's property would have increased, had the damaging behavior (the offense) not occurred.

5. The Proposal attributes significance in several places to relationship links. The relation cannot be vanished for certain offenses (failure to make report: Paragraph 150., Paragraph 219., Paragraph 223., false witnessing: Paragraph 241., failure to disclose mitigating circumstances: Paragraph 243., being accessory after the fact: Paragraph 244.), in other cases the perpetrator is to be punished more severely if the damaged party is his relation (for example pimping: Paragraph 207.). The kinship links also have significance among the orders concerning complaint (Paragraph 31. sec. (4), Paragraph 193. sec. (2), Paragraph 331.).

The content of human connections listed within the area of relation [kinship] is determined by the rules of family law. But the penal law concept of foster parent and foster child is broader than in the family law, it also includes the step parent and step child (Cst. [Family Law] Paragraph 62.).

6. Crime pact is the most dangerous form of committing offenses jointly. In case of several offenses the Proposal values commission in criminal association [crime pact] as aggravating qualifying services.

Crime pact is created when two or more persons commit at least two offenses in an organized manner, and also if they agree in advance in the organized commission of at least two offenses, and based on this they commit or attempt to commit one offense.

To establish crime pact assumes the commission of "offenses" (or agreement therefor). Crime pact can be found also when the perpetrators decide to and begin or end the accomplishment of two or more offenses, but their offenses constitute legal units. But those offenses are not committed in crime pact -- no matter how organized their execution is -- if the previous agreement between the perpetrators was for one-time commission. Crime pact may be aimed at committing either the same kind of offenses or ones of different character.

Organization among the perpetrators to commit offenses may manifest itself in distributing roles, the planned nature of the more significant circumstances and methods of execution, in the consistency of execution, in seeking similar opportunities to commit offenses or using those repeatedly, etc.

Agreement in the organized commission of offenses accomplishes preparation (Paragraph 18.). In those offenses which the Proposal orders to punish, the agreement is to be punished as preparation if the perpetrators did not reach the point of attempting the first offense.

7. Commission as business appears as element of the fact situation of some

offenses in the Proposal's Special Part (Paragraph 204., Paragraph 248., Paragraph 300.), while for other offenses it is an aggravating circumstance.

In more severe judging by the penal law, the Proposal desires to provide increased protection against criminal activity directed at the systematic acquisition of profit as a form of life. To find commission as business it is not necessary that the criminal activity be the perpetrator's only source of earnings, or even his main source of earnings, it is sufficient if he performs it in order to insure systematic supplementary earnings.

In general the commission of several offenses serves as foundation for finding businesslike commission. But finding commission as business is not excluded in the case of committing a single offense either if the perpetrator -- striving to obtain profit systematically -- decides to commit several offenses.

It is not a precondition to finding commission as business that the perpetrator actually make a profit, effort in that direction is sufficient.

Offenses committed as business must be similar in character. The viewpoint expressed in the justification attached to point 13. provides guidance for similarity of character.

Commission as business creates legal unity between the several offenses of the same kind which serve as foundation for finding commission as business; thus evaluating them in agglomerate offense is excluded. It is obvious that

where commission as business is a fact situation element of offense, there the individual part actions cannot be considered as several counts of offense. The situation is the same also if commission as business serves as qualifying circumstance. But that combines only the identical offenses into one legal unity. Offenses of similar character committed as business form agglomerate offense.

8. The Proposal contains commission in time of war as aggravating circumstance for several offenses, primarily ones against the state and military offenses.

Committing offenses in time of war obviously increases the dangerousness of these behaviors to society. Primarily that time period is to be understood by war during which conditions of war exist as declared by the national assembly. But these behaviors to be punished more severely in time of war also represent increased danger in the situation when there is no war but the state's security is threatened either by internal or by external reasons.

Occurrence of danger severely threatening the state's security is determined by and announced by the Presidential Council of the People's Republic (Constitution Paragraph 31. sec. (2)).

9. The Proposal used the concept of product occurring in some fact situations of offenses in a broader sense than the word's meaning in the public language or in economy. According to the Proposal, product means both the industrial (construction industrial) as well as the agricultural product and produce in

all stages of production or producing it. According to the Proposal the live animal must also be understood to be included under produce, as well as the production equipment, including here the real estate, thus the land also.

10. General public exposure is aggravating circumstance of several offenses in the Proposal. The Proposal does not define the concept of general public exposure, but leaves it to the practice of applying the law. General public exposure can be found if a larger number of people are present, or if the realistic possibility exists that a larger or in advance indeterminable number of persons would obtain knowledge of the offense. The number of people present is larger if there are at least so many that their number cannot be established at one glance.

According to the Proposal's interpretation the offense is committed before the general public also if it is accomplished through the means of the press, other mass information medium or by multiplication.

These concepts must be interpreted in accordance with order

No 26/1959. (IV. 26.) Korm. Government relating to some questions concerning the press. According to this, products of press are writings multiplied in a mechanical or chemical manner, illustrations or musical works (Paragraph 1. sec. (1)). Copy of a document not for public dissemination is not press product, if the number of copies does not exceed the justified copy number for purposes of the document's case handling or correspondence (Paragraph 1. sec. (2)).

Relating the thought by means of radio or television, as well as multiplying it by means of film, phonograph record, tape recorder or any other equipment for the purposes of dissemination comes under the concept of press (Paragraph 1. sec. (3)). In the interest of making the definition unambiguous, the Proposal also expressly refers to the other mass information means.

11. Committing the offense in a group greatly increases the dangerousness to society of certain offenses. Therefore the Proposal for some offenses regulates this as aggravating circumstance.

Committing in group is simultaneous, joint accomplishment of the offense by three or more persons. Thus a group is composed of three or more persons. This latter rule provides guidance also in those cases where according to the Proposal committing the offense as member of a group is an aggravating circumstance.

12. In the interest of more effective results against repetitive criminal action the Proposal distinguishes three groups of persons held responsible repeatedly by the penal process, and determines different legal consequences increasing in weight against the perpetrators belonging to the separate groups. (The justification attached to Paragraphs 97. and 98. speaks in detail about these legal consequences.)

The first group of persons held responsible repeatedly by the penal process, about whom the Proposal gives orders, are the repeat offenders. Those

perpetrators who after serving loss of freedom meted out for their earlier intentional offense commit additional intentional offenses, represent increased danger to society. Inasmuch as this takes place within five years, it can be reasonably assumed that their earlier punishment did not reach its goal. Therefore the Proposal excludes the repeat offenders from those favorable opportunities which are based on the assumption that the punishment's goal can also be achieved without meting it out (Paragraph 72. sec. (2)) or without administering it (Paragraph 90.).

It happens as a matter of exception that administration of the punishment does not take place. The fact that after being sentenced to a relatively more severe punishment the perpetrator commits an additional offense, justifies even if the punishment's administration does not take place that his behavior should be weighed more severely. In such case the five year time period begins with the lapse of the punishment's administrability.

13. The special repeat offenders rise out of the broader group of repeat offenders. The special repeat offenders are also repeat offenders, thus the things written in the previous point provide guidance for them also. The special repeat offender differs from the repeat offender in that there is a unique connection between the offenses which form the basis of repetition. This is the identical or similar character of the offenses.

Same kind of offense means that the perpetrator's actions accomplish offenses

defined in identical legal fact situations of the Special Part. It is not necessary for the legal qualifications of the individual offenses to be completely identical, that is, it is possible for example that the earlier action qualifies as the basic case of the offense, the new action can be a qualified case of this same offense.

Developing the sphere of similar quality offenses awaits for the practice of legal application. Of similar character are for example those offenses which are committed by direct bodily violence on the person. Further, forcibly committed offenses against sexual morals and corruption are of similar character among themselves; so are the offenses of corruption; offenses of parasitic character; abuse-type economic offenses; foreign currency and customs duty offenses; offenses against property.

14. Multiple repeat offenders constitute the group of repeat offender most dangerous to society. The multiple repeat offender has been sentenced on at least two occasions previously to administer loss of freedom for intentional offense. A certain consistent behavior of relatively lasting character to commit offenses manifests itself in the commission of the new offense.

For multiple repeat offenders the Proposal specifies the time between serving the earlier punishment (lapse of its administrability) and commission of the new offense in three years. The basis of legal consequences determined against multiple repeat offenders is that such person represent constant danger

to society by committing a series of offenses. But committing a new offense beyond three years calculated from serving the punishment or the end of its administrability cannot be considered as an element of the series.

To Paragraph 138.

The concept definition given in this Paragraph differs from the things contained in the previous Paragraph to the extent that its validity does not extend over the entire Paragraph.

That is, the Proposal's Special Part defines the concept of threat in some offenses differently, more narrowly than the general definition given here. Explanation for the differences is contained in the justification attached to the respective Paragraphs.

The Proposal defines the concept of threat partly with the help of objective, and partly with subjective criteria.

The objective element of threat is: placing severe disadvantage into prosecution. Judging the severity of the disadvantage is the task of the practice of law application. Placing such attack into prosecution which the Proposal otherwise qualifies as offense (for example threatening to set the apartment on fire, to damage some object of property, to do bodily harm) must be considered severe disadvantages under all circumstances. But the concept of severe disadvantage cannot be restricted to this. Placing into prosecution

some otherwise legal behavior can be listed here, if the perpetrator uses it to force something which is illegal. Thus for example threatening with making some penal or lawbreaking report or with disclosing some facts which may affect the threatened person's property interests, family life or honor.

To accomplish threat within the penal law it is necessary that the perpetrator place such severe disadvantage into prospect which is suitable to create serious fear in the threatened party. This must be decided in each case with knowledge of the injured party's situation. It is obvious that it is easier to awaken fear in a weak, exhausted person with unstable nervous system. Serious fear does not necessarily mean panic, extraordinary nervous condition, only that the injured party takes the possibility of the occurrence of the severe disadvantage placed into prospect seriously, and acts in the interest of fending it off.

Chapter X.

Crimes Against the State

1. One of the basic tasks of penal law is to provide protection against those acts which are directed against the Hungarian People's Republic's existence or interests of fundamental importance.

In Chapter X. the Proposal defines fact situations of such offenses which are aimed directly at overthrowing or weakening the Hungarian People's Republic.

2. Fact situations of several crimes against the state (Paragraphs 139. through

142.) define the offense's legal object in the Hungarian People's Republic's national, social or economic order. In our country the relationships defining the essential elements of national, social and economic order are regulated by the Constitution of the Hungarian People's Republic.

National order means the form and limits of exercising the nation's authority. National order includes that Hungary is a people's republic, in the Hungarian People's Republic all power belongs to the working people, the workers of city and village exercise their power through delegates elected by and responsible to the people, etc. The sphere of national order also includes the structural and operational orders of the most important national organs (the National Assembly, the Presidential Council, the Council of Ministers, the councils, etc.).

Social order means the situation, power relationships of society's classes. The social order's definitive element is that the Hungarian People's Republic is a socialist country. Society's leading class is the working class, which exercises power in federation with the peasantry gathered into cooperatives, together with the intellectuals and with society's other working strata. The social order's essential element is that the Marxist-Leninist party of the working class is society's leading power, as is participation of the social organizations in the socialist constructive work.

The economic order's basis is that the tools of production are society's property. Our homeland's economic life is determined by the national economic

plan. The state directs and supervises the national economy, relying on the enterprises, cooperatives and institutions owned by society. The socialist production conditions became dominant in our country, and the exploiting classes have been eliminated.

The national, social and economic orders are closely interdependent, therefore an attack aimed against one of them in general harms or endangers the other, or the others also.

3. The Proposal gives expression to the antistate character of offenses regulated in this chapter by defining the committing behavior's objective direction in the individual fact situations or by indicating the offense's antistate motivation or goal. Definition of the action's objective direction characterizes the fact situations of conspiracy, rebellion and disloyalty. The fact situation indicates the perpetrator's antistate purpose in the cases of causing damage, destruction, treason, aiding the enemy, espionage and agitation, while the fact situations of assault and agitation committed with bodily mistreatment mention the commission's antistate motivation.

Conspiracy

To Paragraph 139

1. Conspiracy is counterrevolutionary grouping of power by several persons brought into existence for the purpose of activity aimed at overthrowing or weakening the national, social or economic order; this activity is usually conspired and coordinated.

Section (1) defines the offense's object: the Hungarian People's Republic's national, social and economic order. Interpretation of these concepts is contained in the chapter's introductory justification. The committing behavior must be aimed at overthrowing or weakening this legal object.

Overthrowing means changing the national, social and economic orders which exist and are specified in the Hungarian People's Republic's Constitution by force or by other means. Weakening means political, moral and material disruption, disadvantageous influencing of constitutional institutions, power relationships. Weakening the national, social or economic order may be a tool of the conspiracy's ultimate goal, of overthrowing the constitutional order.

The fact that the conspiracy is directed at overthrowing the national, social or economic orders indicates the conspiracy's objective effective direction, orientation and does not refer to the perpetrators' subjective aims. But the conspiracy's orientation is determined by the ones cooperating in it — primarily the conspiracy's instigator and leader.

2. Anyone can be the conspiracy's perpetrator, Hungarian and non-Hungarian citizen alike. If non-Hungarian citizen commits it abroad, he is punishable on the basis of Paragraph 4. section (1) point b).

The offense is intentional. This means that the persons collaborating in the conspiracy must recognize that the grouping of power is aimed at overthrowing or weakening the Hungarian People's Republic's national, social or economic

order and they desire this, or reconcile themselves with it.

The conspiracy can only be accomplished by joint activity of several perpetrators. The Proposal, in accordance with the degree of its dangerousness to society, differentiates between the conspiracy's participant and supporter, or its instigator and leader; it threatens the latter's actions with more severe penalties.

Characteristic case of instigating is to persuade others, convince them of the properness of creating the conspiracy, suggestion to create the conspiracy. Initiating the extension of the already existing conspiracy to new areas is also instigating, as is the revival of conspiracy which operated earlier, but later fell apart.

Leadership activity is theoretical and practical directing the activity of the conspiracy as a whole, including there the working out of such program which determines the further line of the conspiracy's direction, as well as creating a new branch for the conspiracy or directing regional groups. The conspiracy can also have more than one leaders. The conspiracy's main directors may divide the directing among themselves, besides this the hierarchic relationship of subordinates and superiors may also develop. Thus leaders are all such persons who not only carry out assignments but specify tasks.

Participants of the conspiracy are all those who cooperate by any behavior in the already existing conspiracy, assuming that they perform no leadership

activity. From this viewpoint the lower or higher degree of activity has no significance. Participation can be found also if the conspiracy's member does not perform any kind of actual activity, only for example is present at the conspiring group's discussions. That is, the conspiracy's dangerousness is also influenced by the number of those who participate in it, and mere participation has the effect of urging, strengthening on the other perpetrators.

The supporter aids the conspiracy without participating in it. But the dangerousness to society of this extending of help may reach the dangerousness of the activity performed by the conspiracy's participant. It can also happen that support coming from the outside makes further operation of the conspiracy possible.

Support always manifests itself in actual activity. With respect to its character it can be of material and moral effect. Support cannot materialize in the form of passive behavior, but in such case the failure to make a report could be mentioned (Paragraph 150.).

Conceptually the conspiracy cannot have accessory before the fact, because behavior qualifying according to the general rules as being accessory before the fact is either participation or support.

3. The conspiracy's weight can be very different, can depend on the participants' personal conditions and also on the objective side's characteristics.

Primarily such power groupings can be listed under the basic case defined in

section (1) the majority of the members of which are politically immature, with confused thinking and bring into existence a loosely organized group, in general with small numbers.

Those counterrevolutionary groups which are well organized, their activity is conspiratorial completely or to a large degree, their means and methods are of increasingly dangerous character, their personnel composition and the persons of the individual participants indicate significant dangerousness to society, are judged more severely. — Section (2) threatens these acts which severely endanger the national, social or economic order with higher penalties. Differentiation is necessary in this case also between the penalty items of the conspiracy's participant and supporter, or of its instigator and leader.

4. If it is committed with arms or in time of war, it significantly increases the conspiracy's dangerousness. Section (3) establishes higher punishment for these cases. — Paragraph 137. point 3. provides interpretation for armed commission, Paragraph 137. point 8. for war.

Finding armed commission does not depend on the number or firepower of weapons available to the conspiracy, nor on whether every participant has weapons. Thus this qualified situation occurs also if the conspiracy has few, possibly only one weapon. But from the side of the individual participant it must be examined whether he knew about armed commission.

It follows from the foregoing that armed commission does not mean severe endangerment of the national, social or economic order in every case, for

example a few firearms with minor firepower by themselves do not yet provide foundation for such finding. Such power grouping which does not severely endanger the legally protected object may come into existence in time of war also. Therefore the penalty items determined in section (3) differ according to whether the conspiracy's basic case, or the qualified case written in section (2) exists. Differentiation between the penalties of the conspiracy's participant and supporter, or its instigator and leader is justified in both cases. The penalty item alternatively containing also the death penalty is necessary only for the most severe acts of the instigator and leader.

5. Section (4) orders that preparation for conspiracy is to be punished. In essence the legal fact situation of conspiracy written in section (1) also includes the behavior of preparation; even that power grouping is to be punished as conspiracy which makes it its goal to overthrow or weaken the national, social or economic order. Thus only such action can constitute preparation for conspiracy which precedes the power grouping's coming into existence, for example an announcement or agreement of several persons to create conspiracy.

In time of war the dangerousness of preparation aimed at conspiracy is also increased. Therefore it is justified to determine more severe punishment for this.

6. In section (5) that legal policy consideration gains validity that it is more important to terminate the conspiracy than to punish its perpetrators. The Proposal establishes a reason to terminate penalizability which concerns the person who reported the conspiracy to the authorities before the authorities had knowledge of it.

The authorities have knowledge of the conspiracy when the authorities come into possession of such data which serve as foundation to commence the penal proceedings.

To make a report is to inform the authority proceeding in penal matters about the offense's commission for the purpose that the authority should take steps toward commencing the procedure. — Penalizability of the conspiracy's perpetrator terminates if the report was voluntary, that is, the perpetrator makes the report on his own volition, free of any external measures, particularly ones by the authority. But this is not to be interpreted tightly. That person's penalizability also ceases who makes the report upon being persuaded by his relation, or because he erroneously assumes that the authority suspects the conspiracy.

Rebellion

To Paragraph 140.

1. The justification to Paragraph 139. already spoke about it that the

conspiracy is such a power grouping against the state which performs its activity in a conspired manner. It changes nothing on the conspiracy's "secretiveness", conspired character that it also conducts acts against the state (for example agitation, destruction) in the open, if it continues to remain a secret that this was done by a counterrevolutionary power grouping.

Another group of counterrevolutionary activities can be performed only by public, open actions; deriving from the offense's nature, the goal desired to be achieved by the act can be accomplished only before the public. The Proposal contains this behavior of commission in the fact situation of rebellion.

2. The Proposal defines rebellion as mass public disturbance aimed at overthrowing or weakening the Hungarian People's Republic's national or social order.

Mass public disturbance means joint, open appearance by several people. In order to accomplish the offense it is not necessary that the perpetrator participate in the mass public disturbance since the rebellion's beginning, it is also sufficient if he joins the already existing mass public disturbance.

3. Rebellion is aimed at overthrowing or weakening the Hungarian People's Republic's national or social order. It is not necessary for the open, joint behavior to be directed against such organ, for example against the national authority or against the central organ of national government, through which

the national order can be overthrown. The offense can also materialize by mass public disturbance against a local national governmental organ, assuming that the open, joint behavior is directed at the same time also at weakening the Hungarian People's Republic's national or social order. If such finding cannot be made, not rebellion but other offense committed in group took place, for example violence committed in group against an official person (Paragraph 228.)

4. Rebellion is aimed at overthrowing or weakening the Hungarian People's Republic's national or social order. The phrase "is aimed at" does not mean the individual goals of the rebellion's perpetrators, but expresses the rebellion's objective direction. But the rebellion's direction is determined by the collaborators — primarily by the rebellion's organizer and leader.

Rebellion is intentional offense. The perpetrator must recognize that the mass public disturbance is aimed at overthrowing or weakening the Hungarian People's Republic's national or social order and he desires this or reconciles himself to it.

5. The action's collective character involves the consequence also in this fact situation that the Proposal defines several perpetrator behaviors. The fundamental perpetrator behavior is participation in the mass public disturbance. Based on the quality of participation the Proposal distinguishes between participation and its more dangerous manifestation: leading and organizing. The other form of perpetrator behavior is support given to the mass public disturbance.

Participation means physical presence in the mass public disturbance, collaboration in the open behavior. It is immaterial whether the participant also perform other activity, for example violence against things or persons. The size, dangerousness of mass public disturbance depends to no small extent on the number of persons participating in it, thus for example also with regard to the effect it exerts on the public opinion, on public order. Everyone participating in mass public disturbance answers for rebellion. The participant's individual goal is immaterial; naturally it is necessary, however, to finding intentional guilt that he be clearly aware of the mass public disturbance's direction.

The rebellion's organizer is the person who creates, develops the mass public disturbance, or who transforms the crowd amassed for another reason into a mass public disturbance aimed at overthrowing or weakening the national or social order. Leader is the person who directs the mass public disturbance, determines the participants' activity, designates it, and whose leadership activity is of comprehensive character, extends over directing the crowd or a significant portion of the crowd. The mass public disturbance can also have several leaders. The rebellion's organizer can later also perform leadership activity.

Due to the nature of the thing, only the already developed mass public disturbance can be supported. By defining support as perpetrating behavior, the Proposal insures that that person also who personally does not take part

in the mass public disturbance, should answer not as accessory before the fact but as culprit. For example insuring the location of mass public disturbance, surveying the road leading to it, keeping such persons away from the scene who would take stand against the mass public disturbance, etc., fall under the concept of support.

6. Since mass public disturbance can take place only on the basis of joint behavior of a sufficient number, at least 15 to 20 persons, attempt of rebellion is conceptually excluded. Thus all such activity which was performed prior to the development of mass public disturbance must be qualified as the preliminary phase of the offense: as preparation.

7. Public order means the actually existing order of national and social conditions defined in the Constitution of the Hungarian People's Republic and in its legal statutes, as well as that which corresponds to the dominant social standards. The concept of public order also includes that situation in which the central and local organs of the national authority or national government can exercise their national and social functions in accordance with the legal and moral standards in effect; in which the national and social organs can operate undisturbed; in which the rights and obligations of citizens can enjoy undisturbed, complete validity.

Therefore severe disturbance of public order can be found if for example the mass public disturbance is aimed against a national organ, if due to its size

significant armed powers had to be used [against it], if the rebellion developed on a larger area or in various areas of the country in a coordinated manner, if the mass public disturbance also involved disadvantageous consequences for the international relationships, etc.

If the mass public disturbance has such means in its possession which make its mass behavior more powerful, overcoming it more difficult, this increases its dangerousness to society. With respect to the difference of means to be considered in this, the Proposal defines two qualified cases of rebellion: commission with arms, or while armed. Both concepts are defined in Paragraph 137. point 3. The difference in the dangerousness of equipment wins expression in the penalty items.

8. The General Part (Paragraph 18.) defines the individual perpetrating behaviors of preparation aimed at rebellion. Among these only the "invitation" deserves emphasis. As perpetrating behavior, invitation is related to the concept of instigation. The difference between the two actions is whether mass public disturbance came into existence or not. In the affirmative case the action qualifies as instigation for rebellion, specifically — corresponding to the perpetrating action of the instigated person — as instigation for leadership or participation. In case of unsuccessful instigation the perpetrator must be found to have committed preparation for rebellion.

9. The justification already referred at the conspiracy to that legal policy reason which in the case of actions against the state justifies the order concerning the termination of punishability.

As appears from the text of section (6), only the rebellion's participant or supporter is entitled to the cause which terminates punishability, and that can refer only to participation in mass public disturbance, but in the case of severe consequence the reason which terminates punishability does not become effective.

The "severe consequence" is not identical with the fact situation element of "severe disturbance of public order". This latter refers to higher degree, more severe dangerousness to society. For example significant damaging, personal injury, etc. can also be severe consequence.

Causing Damage

To Paragraph 141.

1. The recognition that certain behaviors can harm or endanger our national, social or economic order even in the case of individual commission has led to wording the fact situations of damage causing, destruction, and assault to provide protection against such behavior.

The Proposal provides other protection also to the direct object of commission (for example life, bodily integrity) of the actions defined in these legal

fact situations. This recognition led to that solution of legal construction whereby the Proposal designates the antistate character of these actions through the perpetrator's purpose, that is, on the subjective side.

Thus causing damage is an action with purpose. The basis for holding the culprit responsible is whether or not the purpose exists; the knowledge of the participant (accessory before the fact, instigator) must comprehend only with what purpose the culprit acts.

2. Only an official person (Paragraph 137. point 1.), a person performing service in the armed forces and armed bodies, or a person who through election or appointment handles public matters in national or social organs can accomplish the causing of damage as culprit.

3. In the fact situation of causing damage the Proposal punishes those behaviors which the perpetrator exhibits -- with counterrevolutionary purpose -- within the areas of his office, service or public trust, and by which he causes severe disadvantage. Purposeful failure to act, for example nonperformance or inadequate performance of official, etc. obligation can also be behavior of commission. Statute, order, directive, developed practice, specific assignment, etc. can prescribe the obligations which are the perpetrator's responsibility.

4. Causing damage is an offense by result; failure for the result to occur can be evaluated as attempt.

The Proposal applies various concepts in determining the result of an offense, paying attention also to the result's character. It denotes the offense's result by the size of damage caused in offenses against property, and through the concept of damage to interests in offenses against human freedom and dignity.

In causing damage the Proposal uses the expression of disadvantage to define result. That is, the perpetrator can carry out his criminal activity which accomplishes the fact situation of causing damage equally in the areas of national, social, political, economic, and cultural life. The many kinds of harmful consequences which can be generated in these areas can be expressed most aptly by using the word disadvantage.

Corresponding to the purpose of commission, the disadvantage can harm or endanger our national, social or economic order only in a definite order of magnitude. Therefore as result, the Proposal designates the causing of severe disadvantage as an element of fact situation. Severity of the disadvantage can be established by comparing it to the situation which would have occurred in case behavior respecting the obligation were exhibited. Attention must also be paid to the more remote, indirect effects of violating the obligation.

The things related above refer also to judging the "particularly severe disadvantage" — a qualifying circumstance — defined in section (2).

Destruction

To Paragraph 142.

1. Destruction is causing damage involving property items of outstanding importance, committed with antistate purpose. Similarly to causing damage, the direction of antistate intent is related to the perpetrator's behavior: the annihilation of no matter how valuable property object cannot result in overthrowing the national, social or economic order, or in the possibility (danger) of such result taking place, but may be suitable to weaken these.

Therefore in the fact situation of destruction the Proposal specifies weakening the Hungarian People's Republic's national, social or economic order as the committing activity's goal.

2. The action's goal also places that requirement on the fact situation that it determine the circle of those property objects which can be the offense's objects of commission. The Proposal has selected that method of naming these property objects that it lists in part those which can typically occur as objects of commission. But the list is still not exhausted. That is, certain designations in themselves also include several property items, besides this the fact situation expressly refers also to the possibility of other property objects as objects of commission. But use of the expression "similarly important" insures that only such property item can be the

object of commission of destruction the annihilation, etc. of which — due also to the property item's purpose — can harm or endanger the offense's legal object: our national, social or economic order.

Public works are such mechanical equipment, production unit, which insure continuous water, steam, electricity, gas, thermal energy supply to industry, agriculture and the population, or which serve the population's elementary comfort and health.

Production plants are all such plants in which product or produce is made, or prepared. Public traffic operations are operations which perform the tasks of traffic, passenger and freight transportation. Communication plants are the plants of the postal service, radio, television, and press. Reference to the equipment of plants serves to insure completeness of legal protection in the fact situation. Besides public buildings the designation of structure expresses all those establishments which have specific economic, etc. purposes, for example retainer dams, harbors, etc. Definition of product is provided in Paragraph 137. point 9.

3. Among committing behaviors annihilation means termination of the property item's substance or damaging it to such a large extent by which it completely loses its usefulness. Rendering useless excludes the property item's use according to its designation temporarily or permanently, without damaging its substance. Damaging means causing such damage to the property item's

substance which does not result in its annihilation.

4. Deriving from the nature of committing behaviors, destruction is a result oriented offense.

The qualified cases are identical with qualified cases of causing damage; the things mentioned there -- reasonably -- also refer to these offenses.

Assault [Assassination Attempt]

To Paragraph 143.

1. Assault is killing a person or causing severe bodily damage committed due to hostile motivations against socialism.

Assault can be committed only against certain persons whose activity is so closely interrelated with building socialism that attack committed against them at the same time also means attack against the state. Among these persons are members of the popular representative organs, as well as persons who fill directing roles in state organs and in social organizations. Paragraph 137. point 2. defines the concept of state organ. Social organizations are the Hungarian Socialist Workers' Party [the Communist Party's official name. Translator.], the Communist Youth League, the trade unions, etc.

2. Outside the circle of passive subjects, the assault's antistate character is determined by the offense's motivation. Attack carried out against persons

specified in the fact situation is motivated by the activity these persons conduct in the interest of socialism.

3. The Proposal defines two basic cases of assassination attempt: the causing of severe bodily damage and killing.

In order to avoid case study, among the qualified cases of assault carried out by causing bodily harm the Proposal regulates only the bodily harm which causes death. Without such results occurring, other qualified cases of bodily harm -- assaults causing lasting deficiency or severe deterioration of health, or creating danger to life -- are considered basic cases and as aggravating circumstances, they are to be judged within the limits of the penalty item determined there (loss of freedom ranging from two years to eight years). The case is the same regarding acts committed with particular cruelty. The base motivation or goal -- considering the special motivation of assault -- cannot be valued specially.

4. Considering the fact that the Proposal regulates two basic cases of assault -- with respect to the achieved result --, it is justified in accordance with the differing degrees of dangerousness to society it should also threaten the preparatory behaviors with various penalties. Considering the penalty items projected here -- in the interest of adequate differentiation -- it was justified to regulate commission in time of war also as qualified case with respect to both basic cases.

Treason

To Paragraph 144.

1. The fact situation of treason punishes those behaviors by which the perpetrator violates his mandatory faithfulness to the Hungarian People's Republic. In accordance with this only Hungarian citizen can be the perpetrator of this offense. According to the law concerning citizenship (law No V. of the year 1957) the dual citizen is also Hungarian citizen.

2. The offense's object is: the socialist national order and its security. The Proposal protects security in a broader area; it designates the offense's direct objects by designating the direction of this purpose. According to this the perpetrator commits the act with the purpose of harming the Hungarian People's Republic's independence, territorial integrity, political, economic, national defense or other similarly important interest. The purpose of reference to other similarly important interest is to make protection of the Hungarian People's Republic's interests complete. At the same time this wording also appropriately expresses the importance of the injured interest.

3. The committing behavior is: establishing or maintaining contact with a foreign government or organization. This encompasses all such behaviors by which the Hungarian citizen enters into contact with the foreign government or organization.

4. Among the qualified cases the causing of severe disadvantage can be

defined by taking the other elements of the fact situation into consideration, as well as by weighing the circumstances of commission. Disturbances occurring — even if only temporarily — in the diplomatic relationships, any type of disadvantageous discrimination against our country, injury to our international reputation, etc. all may provide the foundation for this qualification.

It unconditionally increases the perpetrator's dangerousness to society if treason is committed by a person who proceeds on the basis of his national service or official assignment.

5. The Proposal also orders that preparation be punished — as in the case of all offenses against the state considering the dangerousness to society of the acts and for the sake of completeness of the penal law's protection. The General Part (Paragraph 13.) contains the committing behaviors of preparation. The Proposal serves easier demarcation of preparation and completed act by defining the activity which commits the completed offense. That is, entering into contact assumes that it is bilateral. Therefore the offer to commit treason is preparatory behavior.

Breach of Faith

To Paragraph 145.

By defining the fact situation of breach of faith the Proposal orders that abuse of national service or official assignment be punished. The antistate

character of the offense is defined by endangering the important interests of the Hungarian People's Republic.

Breach of faith shows similarity with the qualified case of treason defined in Paragraph 144. section (2) point b). In agreement with the above mentioned case of treason the person who commits breach of faith is Hungarian citizen performing national service or official assignment.

The behavior which commits the offense -- in agreement with treason -- is establishment or maintenance of contact with foreign government or foreign organization. But treason is an offense with purpose, the perpetrator acts in order to harm the Hungarian People's Republic's independence, territorial integrity, political, economic, national defense, or other similarly important interests. The person who commits breach of faith is not motivated by such goal in establishing or maintaining the contact, breach of faith is not a goal oriented offense.

In order for breach of faith to materialize it is not enough to establish or maintain contact with a foreign government or foreign organization, or to abuse the service or assignment, but it is also necessary that by abusing the national service or official assignment the perpetrator endanger the Hungarian People's Republic's independence, territorial integrity, political, economic, national defense, or other similarly important interests.

Abuse of national service or official assignment represents such behavior

contrary to one's obligations which violates the statute or instructions related to the service or assignment.

Breach of faith is an intentional offense. The perpetrator must recognize that by his abuse he endangers the Hungarian People's Republic's independence, territorial integrity, political, economic, national defense, or other similarly important interest and he either desires it or reconciles himself with it.

Milder penalty item for breach of faith than for treason is justified by the fact that in breach of faith the perpetrator is motivated not by antistate goals but for example by material or other personal goal.

Aiding the Enemy

To Paragraph 146.

1. The fact situation of aiding the enemy protects the military strength of the Hungarian People's Republic in time of war against cooperation with the enemy, and against betraying its own or the allied armed forces.
2. The behavior which commits the offense is entering into contact with the enemy, extending assistance to the enemy, or causing disadvantage to our own or to the allied armed forces.

Entering into contact encompasses the establishment or maintenance of all

types of connections without respect to in what form this takes place. To accomplish this situation it is not necessary that the connection represent actual aid to the enemy. But in order to find that help is extended it is not necessary that the perpetrator enter into prior contact with the enemy, nor that the enemy know that aid is being extended. Most of the time the extension of aid to the enemy and the causing of disadvantage to one's own or to the allied armed forces go together. The Proposal does not detail the forms in which extension of aid or causing disadvantage occur, these can occur in any form. Extending aid to the enemy or causing disadvantage to one's own or to the allied armed forces can be established by evaluating the effects of all directions of the specific action. Besides material assistance or disadvantage the political effects as well as the effects related to the fighting ability and discipline of the armed forces must also be taken into consideration.

The Proposal protects the allied armed force the same way as the armed force of the Hungarian People's Republic.

3. Due to the nature of the object protected by law the circle of perpetrators is not limited to Hungarian citizens.

The action can be accomplished only with a purpose: for the purpose of weakening the military strength of the Hungarian People's Republic.

Espionage

To Paragraph 147.

1. The fact situation of espionage desires to provide protection against any type of data which can be used to the disadvantage of the Hungarian People's Republic coming to the knowledge of a foreign government or foreign organization.

With respect to the importance of the protected interests the Proposal specifies the area of penal law protection broadly.

The fact situation of espionage defined in Paragraph 147. section (1) specifies such behaviors to be completed offenses which otherwise would only accomplish preparation. In order to complete the fact situation it is enough to volunteer or agree to obtain information, it is not necessary to actually obtain information.

Espionage defined in Paragraph 147. section (2) contains the concept of obtaining information in its fact situation. The behavior which accomplishes it is the obtaining, collecting, or surrendering of data which can be used to the disadvantage of the Hungarian People's Republic. Obtaining the data encompasses all such behaviors by which the perpetrator comes into possession of the data. Collecting the data means continuous, planned activity. Surrendering the data means making it available. This can happen by means of action or omission. The perpetrator accomplishes the committing behaviors for the

purpose of bringing the data to the knowledge of a foreign government or foreign organization. In order to complete the offense it is not necessary that the data actually come to the knowledge of the foreign government or foreign organization. From the viewpoint of accomplishing the fact situation it is immaterial whether the perpetrator wants to bring the data to the knowledge of the foreign government or foreign organization directly, or indirectly by way of their agent.

Foreign organization not only means the foreign information gathering organs, but also encompasses the foreign economic, cultural, and other organizations.

2. Data which can be used to the disadvantage of the Hungarian People's Republic means a broader area than national secret (Paragraph 224.). This is also obvious from the fact that espionage committed with respect to national secret is a qualified case of the offense (Paragraph 147. sec. (3) point a)). Besides the data concerning national life, our international connections, and national defense, the data which can be used to the disadvantage of the Hungarian People's Republic includes the economic and cultural life, all areas of the national activity. Therefore the activity to obtain information conducted in the economic or cultural areas may be classified as espionage, regardless of whether the organization for which the information is obtained is otherwise in contact with the Hungarian People's Republic, and without regard to what the affected organization wants to do with the data thus obtained.

Espionage can be committed involving economic data, if the obtaining of information is aimed at obtaining, collecting, or surrendering such data by which the foreign organization may acquire unilateral advantages in the negotiations, may specify business conditions one sidedly, may take advantage of possible economic difficulties, or even cause economic difficulties. Such activity -- qualifying as espionage -- differs sharply from the market research used in international economic relationships, which is part of the natural process of doing business, conducting negotiations in international trade.

The Proposal defines by general characterization what data can be the subject of espionage, because it can be determined always in a specific case only whether some data can be used to the disadvantage of the Hungarian People's Republic. It is the court's task to make this determination.

3. Among the qualified cases of espionage the concept of national secret must be judged on the basis of the Proposal's Paragraph 224. sections (1) and (2), commission in time of war [must be judged] on the basis of the interpretive order in Paragraph 137. Member of a spy organization is that person who has been organized into such organization for the purpose of conducting spy activity, whose volunteering in such direction has been accepted and who has been notified of this fact. The method of organization -- political convincing, material advantage, blackmail etc. -- is immaterial from the viewpoint of qualifying.

4. The Proposal orders punishment for preparation only for the offense defined in section (2). Espionage defined in section (1) orders punishment for completed offenses for actions which otherwise qualify as preparation; due to the remote degree of endangerment it is not justified to declare the actions, the goal of which is to prepare these, to be punishable. But the attempt to volunteer or entering into agreement is to be punished according to the general rules (Paragraphs 16. and 17.).

5. That consideration of legal policy according to which prevention of more severe results is such an important interest which in the given case comes before the realization of the state's penal law demand, has led to creation of an order which ends punishability in offenses against the state -- in conspiracy and in rebellion. This has special significance in the case of espionage.

Among the activities which commit espionage, the behaviors defined in section (1) are the ones in case of which the more severe consequence, the learning of spy data is easiest to prevent. Therefore the Proposal insures immunity to that person who -- before he would conduct any other spying activity -- immediately and fully discloses to the authorities the connection which ties him to the foreign organization.

Agitation

To Paragraph 148.

1. The Constitution of the Hungarian People's Republic insures broad rights of freedom to its citizens, freedom of speech, freedom of press, and freedom of assembly among them. But freedom of thought and of criticism cannot mean that anyone should endeavor to undermine the constitutional order under this pretext, to disturb the peaceful constructive work of our socialist society. In the interest of protecting the rights of the citizens insured by the constitutional order of the Hungarian People's Republic and by the Constitution, including the rights of freedom, the Proposal regulates those actions as offenses against the state, the purpose of which is to incite hatred against these. Agitation means propaganda and agitation against the state, generating a mood, the purpose of which is to generate hatred, to weaken the influence of our socialist state on the masses.

That public mood which supports the constitutional order, the state's fundamental institutions, forms an important condition for the peaceful constructive work of our socialist society. Various actions may harmfully influence this public mood. The Proposal regulates only those actions as offenses against the state which are committed with the purpose of generating hatred and which are suitable to generate hatred.

2. The designation of constitutional order of the Hungarian People's Republic

includes the basic principles of the Constitution as well as those basic requirements which derive from the orders of the Constitution: socialist legality, equal rights of citizens, unviolability of personal freedom, freedom of conscience, judicial independence, planned socialist economy, etc. But the designation constitutional order also includes those organs of the national authority and government, social organizations, organizational forms upon which our country's organization and social structure rests. Thus the Party, National Assembly, the Presidential Council, the Council of Ministers, the individual ministries, the council organs, the courts, the prosecutorial authority, the police force, the trade unions, the KISZ [Hungarian Communist Youth League], the Patriotic People's Front, the trade union movement, etc.

Besides the Hungarian People's Republic's relationships of alliance or friendship the connections aimed at cooperation refer to those international relationships which derive from our country's socialist character or from the basic principles of its foreign policy. Behavior against these may also be suitable to generate hatred against our country.

It is justified to emphasize some people, nationality, creed, or race among the direct objects due to the international and domestic fascism, the counterrevolutionary experience and hostile propaganda. Use of the word "race" -- instead of the scientifically better supported "type" -- besides the word's everyday usage is also explained by the fact that the Proposal wants to provide protection against the awakening and spread of racial hatred resulting from the fascist concept of race biology.

3. Agitation is an offense of endangerment. This means that the action must be suitable to generate hatred, but actual generation of hatred is not a condition for accomplishing the fact situation. Suitability to generate hatred must always be determined on the basis of the action's specific circumstances.

Agitation occurs if the action is committed "in the presence of others." But it is not necessary that at least two persons be present together when the action is committed. Agitation is accomplished also if the action is committed separately, on separate occasions. On such occasions it is not necessary for the contents of the separate actions to be identical.

Attempt at agitation can be found if the perpetrator does everything he can for the purpose defined by the fact situation in the interest of committing the action suitable to generate hatred "in the presence of others," but this does not take place. Attempt can be found for example in the case of a shipment addressed to others, if it does not arrive to the addressees.

In the case of the so-called snowball-type agitation a unique, chain-type method of commission takes place, to which each perpetrator joins with the purpose of forwarding to unknown persons some communication suitable to generate hatred, to insure its continuity.

4. The interpretation written in Paragraph 137. point 10. must be taken as basis for finding commission before the general public. At least three

persons must be understood by group, in harmony with Paragraph 137. point 11. But joint commission is not necessary. This qualified case can be found to exist also if as member of the group formed to perform agitation -- or for that purpose also -- the perpetrator agitates alone.

Inasmuch as agitation is carried out by members of a conspiracy, besides conspiracy the qualified case of agitation must also be established as burden on the perpetrators.

Disturbance of international relationships can be found on the basis of any kind of disadvantageous measure taken in the direction of the Hungarian People's Republic as a consequence of the agitation.

To Paragraph 140.

It has already been discussed in the justification under assault [assassination attempt] that the Proposal limits this offense -- according to society's needs for protection -- to killing a person and causing severe bodily harm, as well as to a specific area of persons. But such harm which the perpetrator uses against the injured party because he wants to avenge in this manner the activity he performed in the interest of socialism, has increased dangerousness to society in the area of harming a person.

Therefore the Proposal regulates these offenses within the framework of agitation, considering the motivation for committing them.

Failure to Report

To Paragraph 150.

1. According to the Proposal it can be expected of members of our society to prevent the commission of offenses. This expectability — under given circumstances — is an obligation of citizenship, fulfillment of which must be promoted also by the penal law.

The Proposal prescribes the obligation to report for only specific offenses. Such offenses are the crimes against the state, except agitation. But a relative is obligated to report only before the offense is committed, about offenses which are not yet committed. The justification for this order is that reporting protects also the relative himself from the consequences of being held responsible for a more severe, completed offense.

2. The reliability of obtaining information is an element of the fact situation which the court can establish only on the basis of available proof. Information can be considered reliable if the obligated party obtains information on the basis of direct communication about the commission of an offense against the state or about preparation for such, if he is informed by one of the perpetrators of the offense, or from other reliable communication, for example from a person whose word is reliable, by objective proof, etc.

Statements made thoughtlessly, in form of suspicion, assumption, or lightheartedness, by a person who is generally not trustworthy cannot be

considered reliable just the same way as information of uncertain content or origin cannot be.

Offenses Against Another Socialist State

To Paragraph 151.

The identity of ideological, political, and economic interests which connect our country with the socialist countries, the proletarian internationality justify that the Proposal should punish the actions against the state also if those are accomplished to the burden of another socialist country.

Supplementary Penalties

To Paragraph 152.

With respect to the condition defined in Paragraph 60, section (1) and in the introductory order of Paragraph 62, it is necessary to give separate orders about the applicability of confiscation of property and of banishment.

Chapter XI.

Crimes Against Humanity

The Proposal regulates the crimes against humanity immediately after the crimes directed against the state. Including the overwhelming majority of the fact situations included in this chapter into the Penal Code derives

also from the Hungarian People's Republic's international legal obligations.

Crimes which can be committed against humanity harm or endanger the relationship between countries and peoples. Originally the penal codices punished only those of such actions which were committed under the circumstances of war. It became clear on the basis of the experience of World War II. and of the fascism preparing it that urging for war and other such actions committed under the circumstances of peace the purpose of which is that war should break out if that countries or peoples should be oppressed — with a declaration of war or without it —, are no less dangerous to humanity.

In accordance with what has just been said above, this Chapter is divided into two Titles: crimes against peace and war crimes.

Title I.

Crimes Against Peace

Peace, which is one of humanity's most important interests, is protected by the penal law of socialist countries, because war involves international extent of destruction of life and property, endangerment of the universal human culture and of the existence of civilization.

Protection of peace and strict punishing of crimes against peace forms an organic part of the policies of the socialist countries, our country among them.

The offenses defined in this title endanger peace, the freedom of peoples, the existence of national, nationality, racial, or religious groups and their rights to life free of oppression.

Incitement for War

To Paragraph 153.

1. Our country already created law No V. of the year 1950 concerning the defense of peace following the open invitation of the Second World Congress of the Disciples of Peace; the principles of this [law] are defined in Paragraph 135. of the Btk. [Penal Code], in agreement with the present Paragraph of the Proposal. Since then the International Document of Accord of Civil and Political Rights, announced by legal statute No 8 of the year 1976 also declared that all war propaganda must be prohibited by law (Article 20. point 1.).

2. Section (1) designates urging for war and other publicity of war as the committing behavior. Urging means open invitation for war. Other war publicity encompasses all possible forms of war propaganda, all methods of generating the mood for war.

The offense's dangerousness to society is greatly increased if it is committed before the general public; therefore the Proposal determines more severe punishment for this case. Paragraph 137. point 10. contains interpretive order about the concept of general public.

Due to the offense's character of being dangerous to society, punishment of preparation for it is justified. Section (3) gives orders about this.

Crime Against the Freedom of People

To Paragraph 154.

1. Our country's foreign policy respects the right of people to selfdetermination, and supports the liberating movements of people fighting against colonial oppression. Therefore the Hungarian People's Republic forbids its citizens to be members of such armed formations which serve the oppression of the freedom, independence of some people.

2. The armed formation mentioned in the fact situation does not have to be organized as a matter of course for the oppression of people. It can be a formation organized originally for another purpose, or even a regular military unit; the essence is that in the time point of commission it serve the purpose of oppressing the people.

The Proposal limits the circle of perpetrators to Hungarian citizens. It would be excessive extension of the domestic penal law's personal authority if we also threatened the citizens of other countries with punishment for enrolling in the above mentioned armed formation. It is a different question if the formation's member for example committed genocide or some war crime, for this — regardless of his citizenship — he owes penal law responsibility.

3. The behavior which accomplishes the offense is voluntary enlistment in the

armed formation which oppresses people. Enlistment must be understood as any kind of joining the formation, any form of participation in the formation's operation. The purpose and motivation of enlistment are immaterial. Usually the motivation for this is agreement with the formation's purposes, or individual acquisition of profit. The general form of this latter is: mercenary service.

Genocide

To Paragraph 155.

1. The basis for creating this fact situation is the international agreement about preventing the offense of genocide (genocidium) Lat. published by legal statute No 16. of the year 1955. According to Article V. of the agreement the contracting parties obligated themselves to take measures by legislature to severely punish persons guilty of genocide. Paragraph 155. satisfies this international obligation.

2. Genocide is a special purpose, and it is characterized by the purpose of complete or partial extinction of some national, nationality, racial or religious group. Naturally the word "group" in the text does not appear in that unique penal law sense which is defined in Paragraph 137. point 11. -- within the concept area of committing in a group --, but in the broadest sense of the word: the totality of such people whose "group membership" is defined by their belonging to a nation, nationality, race or religion.

Definitions of the committing behaviors listed in section (1) points a) through d) derives from the agreement mentioned in the justification's previous point. Their basis is historical experience.

3. The Proposal -- in this Paragraph and elsewhere -- uses the adjective of "racial", even though from the anthropological viewpoint this is not a precise designation. The international agreements created in the interest of punishing and preventing international offenses committed under the influence of racial theories use the expressions "race" and "racial" because the propaganda of fascism has used this for a long time and this is how it became known before the masses. The Proposal follows this internationally accepted word usage.

4. Punishing the preparation of genocide is justified by the weight and character of the action's dangerousness to society.

Crime Against National, Nationality, Racial or Religious Group

To Paragraph 156.

Recording the orders of this Paragraph into law follows from the international agreement mentioned in the previous Paragraph's justification, and from the legal statute No 16 of the year 1955 created for the purpose of publishing it.

Differing from Paragraph 155, the fact situation of Paragraph 156. is not a purpose-oriented act. The offense against the national, etc. group is characterized by the motivation on the subjective side. The perpetrator causes

severe bodily or spiritual harm because the group's member belongs to the group. Thus commission of the offense derives from the hatred towards the group, from feelings of hostility.

Racial Discrimination

To Paragraph 157.

1. It is seen from the New York agreement published by legal statute No 27 of the year 1976, which [agreement] is concerned with overcoming and punishing the so-called apartheid offenses, that the fact situations defined in Paragraphs 155. and 156. also belong within the sphere of apartheid offenses. Besides these two fact situations, Article II. of the agreement also defines other forms of racial separation and discrimination. Thus for example arbitrary arrest of members of the group, their illegal imprisonment, initiation of legislature or other measures in the interest of preventing the group from being able to participate in the political, social, economic or cultural life; denial of the right to work or to form trade unions; taking away the rights of assembly and association, and so on.

Instead of detailed listing of the committing behaviors the Proposal creates a framework fact situation and besides emphasizing the purpose of racial oppression it designates the committing activity as commission of an act prohibited by international law.

If the racial discrimination accomplishes also the fact situation of a more

severe offense, for example genocide (Paragraph 155.), more serious offense must be found.

Title II.

War Crimes

The Proposal adopts that viewpoint developed in international law that war crimes belong among those offenses which violate the international laws of war. Considering that these offenses are committed under the circumstances of war -- in harmony with recent international conventions -- the Proposal calls these offenses war crimes and regulates it as an independent title of the Chapter of crimes against humanity.

Not to mention here the so-called miscellaneous war crime mentioned in Paragraph 165., there are seven fact situations within this Title. Not only soldiers can commit these fact situations. Therefore it is not justified to place these orders among the military offenses.

Violence Against the Civilian Population

To Paragraph 158.

1. A person belonging to the civilian population and also a prisoner of war can be the passive subject of this offense. The prisoner of war is in an even more helpless situation than the civilian population of the military operation (occupied) area; thus there is no reason to judge violence committed against him more leniently.

Paragraph 158. provides protection to the individual against violence and tyranny. The Proposal gives separate orders (Paragraph 159.) concerning transgressions against property.

Section (2) threatens the offense with the most severe penalty item if it causes death. This qualified case also exists if the perpetrator is guilty only of carelessness with respect to causing the death (Paragraph 15.).

Placing the most severe penalty into prospection is justified by the importance of the protected legal objects -- human life and the international war laws -- and by the fact that in time of war the moral and humanitarian inhibitions become more lax. Therefore the interest of general restraint demands the most severe legal threats.

Instead of creating other qualified cases the Proposal makes it possible by defining an adequately broad framework of punishments that the perpetrator of this severe offense should be punishable in the cases of all methods of commission by proportional punishments.

2. Section (3) contains an example type legal interpretation for inhumane treatment as element of fact situation. International agreements contain the definition of the various methods of commission listed here under points a) through c).

The fact situation defined in section (1) is applicable only if a more severe offense did not take place. If the act at the same time also accomplishes a

fact situation defined in other chapters of the Proposal, this must be applied, assuming that its penalty item is more severe.

War Plundering

To Paragraph 159.

1. This Paragraph differs from plundering on the battle field defined in Paragraph 151. to the extent that the place of committing it is a broader area (of war operations or occupation) than the battlefield, and its objects of commission are not those persons who have fallen victims to warring actions (dead, wounded, or ill). But the civilian population's property (including also the properties of legal persons) of the place of commission. That is, the text does not speak of the properties of civilian individuals (persons), but -- using the adjective of civilian next to properties -- expresses that nonmilitary (civilian) property objects are involved.

With respect to the qualitatively increased dangerousness of armed or group commission, the Proposal considers these methods of commission to be qualifying circumstances. The interpretive orders (Paragraph 137. points 3. and 11.) define the concepts of armed and group commission.

2. According to the Proposal, destruction of property items without military needs accomplishes a more severe offense, that of criminal warfare (Paragraph 160.). The person who plunders is not in commanding situation called upon to judge military necessity.

The Proposal regulates war plundering -- just as violence against the civilian population -- as subsidiary offense. Thus if the act which causes the damage accomplishes for example public endangerment qualified according to Paragraph 259. section (3) the perpetrator is guilty of this latter offense.

Criminal Warfare

To Paragraph 160.

The faction situation of criminal warfare was also included in the Proposal on the basis of generally accepted international legal principles, and on the basis of [international legal principles] worded in the record which supplements the Geneva convention concerning the protection of war victims.

Criminal warfare has a unique subject, namely only the military commander directing the war operation can commit it. In case of initiating the offensive mentioned in point b) it is self-evident that not the arbitrary attacking behavior of the individual soldier must be understood by this, but the military operation.

The text of point a) even emphasizes the war operation character of the committing activity. The destroying, ruining acts which damage the security of the population's life and property, committed by the individual warrior or such lower level commanders who cannot direct the war operation, are to be judged not according to the present Paragraph but to the orders of Paragraph 158. or Paragraph 159.

In case of armed conflict, protection of internationally protected cultural goods has been made mandatory by the Hague agreement published by legal statute No 14. of the year 1957.

Plundering on the Battlefield

To Paragraph 161.

1. Perpetrator of this offense can be civilian person as well as soldier. The plural and the frequentive verb form of "plunders" [the frequentive form in the Hungarian language means repeated action; its concise equivalent does not exist in English. It could be circumscribed if necessary by the awkward phrase of "keeps plundering". Translator] used consistently in the Proposal's text for passive subjects indicate that only those actions can be included under this order which are committed to the harm of several injured parties, or on several occasions.
2. According to the Proposal's standpoint the penalty item is sufficiently strict to be adequate for the cases of all methods of commission. The variations of committing it with violence by accomplishment with arms or in criminal association make the perpetrators punishable for qualified robbery according to Paragraph 321. section (3), therefore there is no need to introduce qualifying circumstances.

Violation of Truce

To Paragraph 162.

The Regulation (Articles 36. through 41.) appended to the Hague agreement of 1907 concerning the laws and customs of war fought on land prohibits the violation of truce. The countries party to the agreement, thus our country also, punished this international offense since the violation of truce condition -- besides being a dishonorable act according to the morals of all peoples -- can lead to bloody repercussions. The consequences cannot even be estimated in advance, therefore it is necessary to threaten the qualified case which involves particularly severe consequences, with stricter punishment.

Violence Against a Battlefield Envoy

To Paragraph 163.

The fact situation of this offense is also part of the international law of war. Even before the Hague agreements the battlefield envoy and his escort were considered inviolable and enjoyed penal law protection by the unwritten law of war of civilized people.

Punishment for the milder forms of committing the offense (bodily violence of respect or bodily harm) is stricter than in the forms of "common law" for such actions. Bodily harm is threatened by more severe penalty than three years [loss of freedom? Translator], in its qualified cases the orders

applicable to these (Paragraph 170. sec. (3) second eventuality, secs. (4) and (5)) must be applied for violence against battlefield envoy also. At this last method of commission mentioned the particular quality of the passive subject is an aggravating circumstance.

Intentional killing of the passive subject is to be punished by the penalty determined for qualified cases of taking a human life (Paragraph 166. sec. (2)) even if the qualifying circumstances written there do not prevail. The basis of this strict judgement of the penal law is that the violent act against the battlefield envoy not only endangers the person of the passive subject but also the highly important military or other national interests.

Abuse of the Red Cross

To Paragraph 164.

1. Based on the Record supplementing the Geneva agreement published by legal statute No 32. of the year 1954 and concerning the protection of war victims, besides the emblem of red cross the Proposal also extends protection to the emblems of the red crescent, as well as of the red lion and Sun.

The organizations which use the emblems mentioned serve humanitarian purposes; respecting them is the interest of every country. Therefore the fact that they deserve penal law protection is recognized worldwide.

Abuse of the insignia can take many forms, for example unauthorized wearing of it or unauthorized display on a building or vehicle.

2. The emblems listed in the first part of the fact situation symbolize international organization. In part the orders of the second part were made necessary by the fact that in time of war not only the international organizations mentioned but also the civil defence organizations of the individual countries perform humanitarian tasks. The members and establishments of these are also entitled to use a distinguishing sign (blue triangle on orange base) and also enjoy privileged legal status.

Those establishments which contain dangerous energies (dams, dikes, nuclear power plants) and therefore damaging them may involve catastrophic effect on the area's civilian population can be distinguished by a special sign (3 orange colored circles).

It is obvious that — in harmony with the international agreements mentioned in point 1. — the penal law should also protect the emblems (signs) mentioned here.

The fact situation also mentions signals among the objects of commission. This is necessary because the vehicles transporting medical aid, or the wounded and the sick are entitled to use light and radio signals which have been agreed upon, which provide protection for their user. What has been said so far is also valid for acts which deserve punishment for violent acts against objects distinguished by such signal or abuses connected to [the use of] such signal.

Other War Crimes

To Paragraph 165.

The Proposal's Special Part contains the fact situations of all offenses. The sole exceptions are the war crimes defined by Paragraphs 11. and 13. of order No 81/1945. (II. 5.) ME [prime minister] — modified and supplemented by order No 1440/1945. (V. 1.) ME — and elevated to the strenght of law by law No VII. of the year 1945.

There is no statute of limitations on war crimes (Paragraph 33. sec. (2)). That is, as long as the perpetrator of war crimes committed during World War II. may still be alive, it is justified that the Proposal should refer to these, designating that statute which contains the order concerning them.

Chapter XII.

Crimes Against the Person

One of the fundamental requirements of our penal policy is penal law protection of the persons of citizens. Its outstanding social significance justifies that the Proposal should place the chapter concerning offenses against the person immediately after the chapters which contain the offenses against the state and humanity.

The offenses against the person attack the fundamental human rights deriving from individuality. Individuality is connected to man [human] taken in the

biological sense, but is also supplemented in social aspects. Therefore besides the conditions of man's biological existence, penal law protection must also be insured for the expressions and manifestations of individuality. Thus the rights of personality are tied on the one hand to life, bodily integrity and to the whole, on the other hand to human freedom and dignity. In accordance with this, this Chapter is divided into two Titles.

Title I.

Crimes Against Life, Bodily Integrity, and Health

Title I. includes those offenses against the person which are directed against man's biological existence. In systematizing the offenses the Proposal takes for foundation the existence of the protected legal object and the weight of the attack against the legal object. Therefore Title I. gives orders about the offenses which harm life, bodily integrity, and health, then speaks about those offenses which endanger these legal objects.

Taking a Human Life

To Paragraph 164.

1. It is the traditional codified solution of the Hungarian penal law that on the one hand it distinguishes the killing of a man [human] as intentional and as careless with respect to the character of the offense, on the other hand -- within the intentional coordination of committing the offense --

[It distinguishes] between the various formations of the offense with respect to their dangerousness to society. The 3-way subdivision of the acts of killing derives from this: The regulation of the basic case of intentionally killing a man, and the qualified and privileged cases of this.

2. The Proposal develops the qualified cases of intentionally killing a man for the perpetrator's motivations and purposes, for the particularly dangerous method which the commission presents to society, with respect to its quality which demands increased protection. Grouping the qualified cases was accomplished on the basis of the following logical consideration: development of the intention, the motivation, the manner of carrying it out, the person of the injured party. The Proposal forms the text according to these considerations.

a) Commission planned in advance increases the action's and the perpetrator's dangerousness to society not because of the manner of carrying it out but because the intention was formed and grew, due to weighing the act's commission and the commission's consequence.

b) Besides the base purpose it is not unnecessary to refer to commission out of desire for profit because this is how the public knowledge also recognizes acts of killing committed for the purpose of acquiring property. Since the majority of killings committed for base purposes is committed out of desire to obtain profit and the latter is a characteristic, easily characterizable type, it appeared practical to place it in a separate point.

c) The Proposal defines the outstanding dangerousness to society of cruelty not from the viewpoint of the injured party but from that of the perpetrator. Therefore regardless of what kind of bodily suffering or psychological torture the act of killing caused to the harmed party, special cruelty exhibited in carrying out the act increases the perpetrator's dangerousness to society. Therefore the Proposal includes all manifestations of sadism under this qualifying circumstance.

d) The Proposal ties the increased penal law protection of an official person's life to the character of the person being official. Therefore this qualifying circumstance does not extend to cover persons performing public tasks (Paragraph 230.).

e) Killing of humans committed on more humans can be found if the action is committed on two or more humans; commission at the same time is not a condition for applying this qualifying circumstance; the accounting of responsibility must be done in one proceeding.

f) Mankilling [manslaughter] committed in a manner endangering the lives of many people can be found if the perpetrator besides the harmed party also endangers the lives of an indeterminate number, or determined but large number of persons without intending to kill them.

g) The justification attached to Paragraph 97. of the Proposal refers to the fact that in killing the repetition appears as a qualified case. According

to Paragraph 137. point 13. the repeat offender is a special repeat offender who on both occasions commits identical or similar offenses. Legality requires that in the offense formation threatened by the most severe punishment the law should define: what can be considered offenses of similar character. Section (5) satisfies this requirement.

3. The Proposal declares preparation for killing as well as killing committed out of carelessness to be offenses, in the interest of increased penal law protection of life.

Manslaughter Committed in the State of Severe Excitement

To Paragraph 167.

1. The conditions of the privileged fact situation of manslaughter committed in severe excitement are the following: the precondition for establishing severe excitement is that the perpetrator carry out his act in such upset condition in which his judgement is blurred, in which he is unable to consider, contemplate his action in the usual manner. It is a further precondition for being able to establish the privileged fact situation that the emotion -- at least to some extent -- be morally defensible; it is also a condition that the perpetrator has to act "within a short time considering the circumstances," that is, in the condition of severe excitement.

The rule of limited accountability (Paragraph 24. sec. (2)) is not applicable

merely on the basis of the perpetrator's degree of being upset. The fact that the perpetrator commits the killing while severely upset due to justifiable cause is considered by the Proposal by determining a more lenient penalty item.

Thus creation of the privileged fact situation also serves the increased protection of life, because the consequence of limited accountability: the possibility of unlimited mitigation of the punishment cannot be applied.

The Proposal defines commission while severely upset due to justifiable cause to be a privileged case and attaches more lenient penalty item to it only in the case of killing. Such commission in the case of bodily harm must be evaluated within the sphere of meting out the penalty.

Collaboration in Suicide

To Paragraph 168.

The committing behaviors defined in the fact situation (inducement and extension of assistance) are accessory acts: when connected to the offense, they may be the foundations for finding incitement or accessory before the fact. In spite of the fact that the Proposal considers the basic act, the suicide contrary to the socialist ideology, it does not threaten it with punishment because it would exceed the purpose of punishment. Therefore due to the lack of the fundamental act it is necessary to threaten the "accessory" behaviors with punishment as these are dangerous to society and deserve punishment.

Abortion

To Paragraph 169.

1. Artificial termination of pregnancy is risky medical interference which endangers the pregnant woman's health, not infrequently even her life. The risk connected to termination of pregnancy can be decreased to the lowest possible level by insuring appropriate hospital conditions. Illegal termination of pregnancy is much more dangerous when abortion is caused mostly under inadequate circumstances, without the necessary circumspection and precaution, very often under the conditions of unqualified charlatans and with tools which involve the danger of infection.

2. According to the Proposal's standpoint the penal law stance against the termination of pregnancy also serves to protect public health, as it is dangerous to society. Illegal and criminal termination of pregnancy not only endangers the pregnant woman's health, but also has harmful effects on the population's health care conditions. Even though the penal law cannot be the crime tool of population policy, but it is unquestionable that the penal law protection against termination of pregnancy, since it is dangerous to society, also to some extent and indirectly exerts an influence on how the number of births develops. Due to all these, society must also protect itself against illegal termination of pregnancy by means of the penal law.

3. The objects of abortion are: the pregnant woman and the womb's fetus.

Therefore it is justified that the law should regulate abortion in the chapter of offenses against the person, among the offenses against life, bodily integrity, and health.

4. All offenses are illegal acts; offense does not take place in the case when rights insured in statute are practiced. With respect to this general principle of penal law the Proposal considers it unnecessary to separately emphasize that artificial termination of pregnancy in a permitted manner, or having it terminated (order No 4/1973. (XII. 1.) DuM [Ministry of Health]) in a permitted manner is no offense.

The Proposal considers that person's act more severely who aborts the fetus of another. It defines this as the basic case and threatens it with more severe punishment than the woman's action.

It regulates the mother's behavior as privileged case, whether she aborts her own fetus or has it aborted by another; therefore the pregnant woman's act cannot be qualified according to section (1).

The orders concerning the qualified cases of abortion are suitable for making the necessary and proper differentiations between the actions which occur in practice. Abortion done as business, or without the pregnant woman's agreement, or causing severe bodily harm or danger to life are to be punished more severely. The interpretive order of Paragraph 137. point 7. provides guidance for commission as business. Section (2) point c) and section (3) are in harmony with regulating the qualified cases of bodily harm.

Bodily Harm

To Paragraph 170.

1. The Proposal defines one single basic case of intentional bodily harm. this is the light bodily harm defined in section (1). The severe bodily harm circumscribed in section (2) is a qualified case of light bodily harm.

These two types of bodily harm are separated from each other by the duration of healing, which the Proposal defines in days. That is, using eight days as foundation for the duration of healing has foundations in experience: the most favorable length of time by which the wound's anatomical healing takes place is eight days, that is, the wound usually heals on the eighth day. The Proposal connects the other qualifying circumstances to the basic case of bodily harm and to severe bodily harm.

When determining the penalty items of the other qualifying circumstances, the Proposal groups the qualifying circumstances according to whether those qualify the light or severe bodily harms or order the bodily harm to be punished more severely regardless of the duration of healing for the injury (illness). The former are defined in section (3), sections (4) and (5) give orders about the qualifying circumstances about the latter.

2. Part of the qualifying circumstances is the same as qualifying circumstances for killing, therefore the things mentioned there obviously also provide guidance for bodily harm.

The expression of "lasting deficiency" includes bodily as well as intellectual deficiency. Severe deterioration of health cannot unconditionally be identified with long duration of healing: based on expert opinion, the post trauma condition must also be taken into consideration when establishing the qualifying circumstance. A broad area of practical experience is available to the one applying the law for finding bodily harm resulting in death as qualified case.

The following deserve attention concerning bodily harm which causes danger to life: danger to life -- medically speaking -- can be found in general if the effect suffered by the injured party harms a vital organ, causes secondary hindrance in the operation of vital organs, severe malignance causes internal or external bleeding, leads to such shock which requires shock treatment, or can be the direct cause of complications by opening the body cavities.

The perpetrator answers for causing danger to life -- as a result -- according to the Special Part's orders (Paragraph 15.), whether he is guilty of intentionality or negligence in this respect.

Concerning the basic case -- bodily harm -- the perpetrator has to act intentionally. If he is guilty only of carelessness, the act is qualified as bodily harm committed out of carelessness, defined in section (6).

Endangerment Committed Within the Sphere of the Job

To Paragraph 171.

1. Inclusion in the Penal Code of fact situations of endangering acts

committed within the sphere of the job is necessary in the interest of increased protection of such legal objects in connection with which injury with large frequency and typically occurs from the danger situation, and the injury is so significant in a large number of the cases that because of this even the behaviors which cause the danger of injury occurring must be punished.

2. The offense's legal object are the lives, bodily integrity, or healths of one or more people.

Job is a collective concept which encompasses the entire concept of profession and also of position.

When determining the circle of persons who commit the offense (persons subject to occupational rules) the Proposal starts out from the point that it would not sufficiently insure the protection of human life, bodily integrity, and health if it were limited only to the cases of violating the rules of occupations involving increased danger or some selected occupations (for example medical treatment), or merely to violating some (for example job protection) requirements.

But it also cannot see a reason to create an endangerment fact situation of general validity (which can be accomplished by anyone, in any way). That is, penal law responsibility must be limited to those cases in which only this responsibility system is suitable to prevent behaviors dangerous to society, to urge the correct behavior, and in which application of the penal law's force is also in accord with the social awareness of law.

Therefore the Proposal limits the penal law protection for occupational rules, qualifying also the rules concerning the use and maintenance of firearms as occupational rules.

3. According to correct interpretation of the order, not only those belong within the conceptual sphere of persons subject to occupational rules who perform activity requiring trained qualifications, but also those who practice other activities tied to written or unwritten, generally accepted rules, regardless of whether they practice this activity for the purpose of income, or not.

4. Endangerment committed within the job sphere is a material offense committed by the person who by violating the rules of his job exposes another to direct danger, or causes bodily harm to another by violating the rules of his job. The fact situation element of the danger's "directness" is necessary in order to narrow the sphere of its application in accordance with life's requirements.

The penal law concept of direct danger can be considered to have been [fully] developed. Direct danger means the realistic possibility of harm to bodily integrity or health, danger which has become specific for the situation and for the person. The essence is that the danger should appear by stepping out of its general character, in a definite, externally recognizable form, with respect to the individual person or persons.

In the causing of bodily harm the Proposal does not differentiate according to whether the injury healed within eight days or beyond this (Paragraph 170. secs. (1) and (2)), this can be evaluated within the area of meting out the penalty.

5. The Proposal considers actual harm more severe than bodily harm as a qualifying circumstance. The qualifying circumstances specify in both, the intentional as well as the careless variations of endangerment committed within the sphere of the job, are in harmony with the qualifying circumstances of bodily harm and of the traffic offenses.

Failure to Extend Aid

To Paragraph 172.

1. It can be required of each citizen to extend the aid which can be expected of him to an injured person, or to a person who has gotten into a situation directly endangering his life or bodily integrity.

The Proposal extends protection not only to those who have become injured due to the reprehensible behavior of others, but to everyone who has gotten into a situation directly endangering life or bodily integrity.

2. The offense's passive subject is the injured or the person who has gotten into a situation directly endangering life or bodily integrity.

When regulating the qualified case specified in section (3), the Proposal considered it unnecessary to refer to what behavior of the person obligated to extend aid caused the injury or the situation directly endangering life or bodily integrity. That is, penal law evaluation of the perpetrator's behavior taken in this sense is not relevant. If this behavior exhausts the fact situation of some offense, the perpetrator -- in accordance with the rules of agglomeration -- answers for it with respect to the committed offense. If the behavior is not an offense, it is immaterial whether the person exhibiting it proceeded in it with or without guilt: his responsibility for failure to extend aid can be found either way, if otherwise the conditions of punishability exist. Since nobody is required to report himself [to the authorities], the practice continues to be correct whereby the perpetrator of intentional offense cannot be held responsible for failure to extend aid to the person injured by his act.

3. Paragraph 190. of the Proposal words such a fact situation by the name of "Abandonment" which threatens the driver of a vehicle involved in a traffic accident with punishment if he does not stop at the scene, or leaves there without ascertaining whether anyone was injured. The fact situation of abandonment is subsidiary. Thus inasmuch as the traffic accident involves injury, and the driver of the vehicle causing the injury does not extend aid, he owes responsibility for failure to extend aid.

Failure to Provide Care

To Paragraph 173.

1. Human life, bodily integrity, and health can be endangered not only by violating the rules of job, but also independently of it. Such situation takes place if a person obligated to do so violates his obligation existing for the care of a person who cannot care for himself, and thereby places him into a danger situation. Protection of life, bodily integrity, and health requires that the penal law should provide protection also against such behaviors.

2. This offense can be committed against that person who cannot take care of himself due to his condition or advanced age. The condition which makes the person unable to care for himself can exist due to age, illness, bodily or intellectual deficiency, but it is not excluded either that it is caused by other circumstance. Regarding age, the Proposal emphasizes advanced age. That is, in practice the failure to care for, for the most part aged, helpless people takes place, therefore protection by penal law is particularly important in this area.

This offense cannot be committed to the injury of a minor. In case of failure to provide care for a minor, the fact situation of endangerment of a minor, defined in Paragraph 195. section (1) is to be applied as special fact situation.

3. This offense can be committed only by the person who on legal basis has the responsibility to care for the injured party. This caretaking responsibility can derive from statutory regulations (family ties), contract, or other personal relationship existing between the injured party and the perpetrator.

The content of care depends on the condition of the person needing it. It includes satisfaction not only of the strictly interpreted physical needs but performance of all tasks necessary to maintain life, bodily integrity and health, insuring medical treatment in the given case, also supplying constant supervision and control.

4. The offense is committed when due to failure of the person obligated to provide the care, realistic possibility of harm to the injured party's life, bodily integrity or health comes into existence and the perpetrator's intent extends over it.

Title II

Crimes Against Freedom and Human Dignity

Penal law protection of freedom and human dignity follows from the social significance of the fundamental rights of citizens recognized in the Constitution.

The socialist social conditions insure the realization of citizens' rights.

The penal law provides protection against behaviors which hinder the realization of citizens' rights where this is specifically needed and the tools of penal law appear suitable for this.

Title II encompasses those fact situations which are directed against the rights of citizens. Freedom of action and personal freedom, respect for private home and mail secret are rights the protection of which belongs within the sphere of penal law protection of human freedom.

Human dignity is an inseparable part of man's personality which requires penal law protection particularly with respect to honor. Title II attaches penal law consequences to the various formations of attack against human dignity and honor.

Compulsion

To Paragraph 174.

1. The effort of providing as complete a protection as possible to the protected legal object as possible justifies declaring compulsion to be an offense.

Against those acts which attack human freedom, Chapter XII. Title II of the proposal defines special fact situations: violation of personal freedom, violation of private residence, etc. But besides these a fact situation is also needed which protects the freedom of human acts in a broader area. Among the behaviors which can be considered here, those reach the dangerousness to society which defines the offense which are carried out with violence or threat. This it is justified to declare all such behaviors to be offenses which by violence or threat influence the injured party's freedom of action, which causes him to act not in accordance with or even exactly contrary to his

free will, in this sense to do something, not do or endure something.

This consideration provides the legal policy justification for the fact situation of compulsion.

2. The Proposal differentiates between the offense's types according to the character of society's definite interests which it wants to protect. But a fact situation created for the purpose of protecting any interest necessarily also protects human freedom, inasmuch as it is carried out with violence or threat. Therefore the circle of the compulsion fact situation's validity exceeds the limits of Chapter XII: all such offenses which are carried out with violence or threat could also be included under the fact situation of compulsion.

In such case, among the competing fact situations of offenses the judicial practice establishes guilt in the offense threatened by the more severe punishment. According to the proposal's standpoint, however, it follows from the general character of the fact situation of compulsion that compulsion can be found only if other offense did not take place. The other occurred offense must be found even if its penalty item is milder than that of compulsion.

This is why the statement "inasmuch as no other offense takes place" appears in the fact situation of Paragraph 174.

3. Naturally the situation is different if the action accomplished does not exhaust the elements of another offense's fact situation (for example because the threat applied was not according to the fact situation).

According to the Proposal's Paragraph 138, threat is: placement of severe disadvantage into prospect, which is suitable of arousing serious fear in the threatened. Such fact situations can be found in the Proposal (for example Paragraphs 197., 321., 322., etc.) which define the concept of threat more narrowly. For these offenses only direct threat against life or bodily integrity are to be understood under threat. Therefore in all such cases where the threat included in the fact situation is not directed at the specified legal object, for example at life or bodily integrity, but its content is such that it arouses serious fear in the injured party, can be included under the fact situation of compulsion.

The fact situation's general character can involve the danger that practice draws its circle of application too broadly. The Proposal, in order to insure the proper application, attaches materialization of the fact situation to result, to causing significant harm to interests.

Materialization of significant harm to interests must be established in accordance with the concept developed in judicial practice. This can be harm to the public interest, as well as to interests of individual persons. It can manifest itself not only in material disadvantage but also in disadvantages of another character -- harm to the family's honor, to good reputation, etc. Significance of the harm to interests can be determined only on the basis of all circumstances in the case, on the basis of the character, direction, social judgement of the harm to interests.

Violation of Personal Freedom

To Paragraph 175.

1. The concept of personal freedom encompasses many directions of the manifestation of personal freedom. The Proposal serves to protect man's freedom of action by penal law. And since the fact situation of compulsion — as we have seen — protects the freedom of human action in the broadest circles, inasmuch as it is being attacked by means of violence or threat, Paragraph 175. protects a definite area of freedom of action: the freedom of changing one's location [in Hungarian: a more descriptive, though awkward "place of keeping himself". Translator].

2. When defining the fact situation of this offense, the Proposal avoids going into excessive detail, and defines the committing behavior in depriving another of his personal freedom. This encompasses all those behaviors which limit or hinder the injured party in movement, changing his place of selecting his location.

3. Regarding the qualified cases: a) It is proper to judge the baseness of reason or of purpose on the basis of social, moral viewpoints. Long lasting anger, hatred, revenge, jealousy qualify as base reason or purpose. Violation of personal freedom committed for the purpose of causing damage to the injured party qualifies as having been committed for base reasons. Violation of personal freedom carried out for compensation, as all offenses committed for such reason in general, accomplishes the qualified case.

b) The thought that penal law evaluation involving a person's characteristics as official person cannot be separated — either concerning the perpetrator or with respect to defense — from the official procedure, runs through the Proposal's regulation. Consistent execution of this thought also justified the wording of the qualified case under consideration. Therefore the Proposal threatens with larger penalty not those who carry out their acts by simulating "official quality," but those who [simulate] "official procedure."

Thus this qualified case encompasses all those activities which are made to appear as activities of state organs performing public authority activities.

c) By tormenting the public language understands the causing of all types of bodily or psychological suffering, misery, torture. The Proposal's qualified case interprets this concept more narrowly. That is, if the act causes such harm to the injured party's body or such deterioration of health which the penal statute punishes anyway, this — also taking the penalty items into consideration — is not a qualified case but the basic case of violation of personal freedom, and in connection with this in agglomeration for example the causing of severe bodily harm may be found.

The method of tormenting may take many forms: starving, withholding water (drink), keeping under inhuman circumstances (in dark, in cold), etc. Threatening the injured party with mortal danger, holding him in the fear of death, untrue news about his relation, for example informing him of mortal illness, etc.

d) It increases the dangerousness to society of the violation of personal freedom if it causes significant harm to interests. Harm to interests can be not only of material character, but all types of disadvantageous consequences which affect the injured party, consequences of personal, family, moral character alike.

That consequence for example also provides the foundations for this qualification if the injured party due to having been deprived of his personal freedom cannot be present at a vitally important conference, misses the negotiation of some highly important contract, etc.

Violation of the Privacy of Private Home

To Paragraph 176.

1. Protection of human freedom and dignity is an important interest, thus the significance of an act attacking or harming this -- its dangerousness to society -- are not to be belittled. But when deciding the question of whether some behavior dangerous to society reaches the level of offense, we must start out not only from the character of the interest desired to be protected but it also must be taken into consideration what is the degree -- in general -- of the dangerousness to society of the behaviors specifically, the dangerousness to society of the actually accomplished acts which occupy the crimefighting organs.

Among the licenses representing human freedom, the fact situation of violation of the privacy of private home protects undisturbed use of the apartment. The Constitution also declares in the inviolability of private home. Yet the Proposal adopts the standpoint that it is not justified to declare all behaviors which commit what qualifies as violation of a private home according to the legal regulations in effect, to be offenses.

In developing its standpoint, the Proposal took the following into consideration.

a) Sentencing experience shows that a significant portion of behaviors which accomplish the violation of private home occur not as independent actions but in connection with some other punishable act, for example with theft. And since that theft -- accomplished with respect to a value which does not exceed the value limit of rulebreaking -- which the perpetrator carries out by entering into a room or into an enclosed area belonging to it, using misleading or without the knowledge and agreement of the authorized person (user), qualifies as misdemeanor theft (Paragraph 316. sec. (2) point f)), these actions which according to the law in effect qualify as violations of private home -- that is, offenses -- in the future will continue to be judged without change as offenses.

b) Those living conditions on the basis of which -- in earlier times -- the violation of private home has been defined have also changed. Even the

ministerial justification for the law now in effect refers to the fact that due to our changed circumstances a significant part of those actions which qualify as violation of private home are carried out as a result of co-tenancy relationship or of other forced conditions of living together [sharing a dwelling]. (It must be mentioned here that co-tenancy today can no longer be created.) In a significant portion of the discovered cases the reason for committing it indicates opportunity rather than criminal intent.

c) Significance must be attributed also to the fact that the legal regulation now in effect -- in agreement with the regulations of socialist codices -- does not cover such rooms which are not under the control of private persons. The fact situation of moving in arbitrarily, as defined in order No 17/1968 (IV. 14.) Korm. [Government] Paragraph 146., concerning the individual rule violations declares the occupation of a vacant room belonging under the effect of the statute concerning room management, or arbitrarily moving into it, to be rulebreaking. According to the experience the procedures which have been started for rulebreaking also serve their function -- society's protection -- well.

Based on these considerations the Proposal does not declare those cases of private home violation to be offenses which are defined as the basic case in the law now in effect.

2. But the situation is different in those cases in which some circumstance

increases the action's dangerousness to society, for example committing it at night or while armed -- those circumstances in general which the law now in effect considers to be qualifying circumstances. The Proposal also considers these fact situations to be dangerous to society in such a degree that it considered it justified to declare them to be offenses.

3. The fact situation of violating the private home occurs, the act is illegal if the perpetrator acts against the will of the person living there or of the one exercising control. But for an offense committed with violence or threat this element of the fact situation is not necessary: that is, the perpetrator who enters or stays in the apartment, etc. in such manner cannot do otherwise. The situation is similar when entering by imitating official procedure. In this commission even though the entering was permitted, but the giving of permission is based on misleading, that is it does not express the actual will of the injured party.

This recognition determines the fact situation's structure. The Proposal describes that method of commission in section (1) in which the perpetrator uses violence, threat, or deception; but in section (2) the element of fact situation is to act "against the will of the person living there or of the one exercising control."

4. Dwellings are all such rooms which -- even if only temporarily -- serve as places for people to stay. It is a basic criterium that the room be

intended for residence. From this viewpoint the Proposal does not differentiate according to whether real estate or a movable object is involved: sleeping car, house on wheels, tent, etc. alike come under the concept of dwelling.

Other room means such enclosed building or part of a building which serves not as apartment but for some other, primarily economic activity. Such room does not have to be continuous with the room serving for living purposes, it can be for example an independent economic building also. As the word is used by the Proposal, rooms are all such rooms also which are in close connection with the room serving as dwelling, for example basement, attic, stairwell, balcony, etc.

Enclosed space is such area where it is possible to enter legally only through the use of equipment designed for entering, or where entrance is possible by exerting physical effort through such obstacle which was installed for the purpose of protecting the place.

5. The behavior which commits the offense is entrance into or remaining in the apartment. Entrance assumes that the perpetrator's entire body gets into the apartment: leaning or reaching in through the window does not yet constitute "entrance." Remaining in is: not leaving the apartment etc. in spite of being told to do so.

6. The General Part contains the definitions of committing with arms, while armed, in group (Paragraph 137. point 11, Paragraph 138.). Committing at

night is to be judged in cities generally in accordance with the time of locking the gates — 11 o'clock in the evening —, but in smaller localities in accordance with the local customs, in general committing after 10 o'clock in the evening corresponds to this element of the fact situation.

7. Preventing another from entering into his apartment, other room, or enclosed location belonging to these (section (3)) accomplishes the misdemeanor of violating a private home only in that case if it is accomplished in the manner defined in sections (1) or (2).

8. The Proposal judges the dangerousness to society of commission at night, with arms, while armed, or in group to be of such degree which coupled with violence or threat justifies a more severe penalty item. Therefore committing the basic case defined in section (1) according to points a) through d) of section (2) calls for the penalty item according to section (4). The qualified case defined in section (4) does not concern the committing behavior according to section (3).

Violation of Private Secret

To Paragraph 177.

1. The fact situation of violating private secret is built on the fact that in our society it can be demanded of all such persons to keep private secrets safe who — during the course of any function — come into possession of such secret.

The Proposal insures such broad-based protection of private secret by the order that it does not limit the protection of secret to data learned during the occupation, but extends it also to the office -- assignment -- fulfilled during the public assignment. This regulation corresponds to the fact that in the social, political, economic, and cultural life our society has created numerous such organizations in connection with the operation of which the citizens perform their public activity, live their social life.

2. Broad-based protection of private secret wins expression in the fact situation in one more respect: in defining the obtaining of "secret." That is, from the injured party's viewpoint it is immaterial how the perpetrator came into the secret's possession; His interest is manifested in not wanting another unauthorized person to learn it. Therefore the fact situation does not contain any kind of restriction regarding the obtaining of secret: the person affected must keep the secret he learned. Therefore it is immaterial whether the injured party entrusted the secret to the perpetrator, or the perpetrator learned it in another way, for example on the basis of communication by a third person.

3. According to the generally accepted definition, private secrets are all such facts, circumstances known only by few to the keeping of which the affected person's appreciable interest is linked: private secret. Thus any kind of confidential data of personal, family, property connection can be secret.

The secret nature of some fact must always be judged on the basis of the specific correlations. Thus secret is a relative concept. In the given case for example some deficiency — physical as well as intellectual deficiency -- can be qualified as secret, inasmuch as revealing it may harm the affected party's interests.

4. Such interests may be attached to learning the private secret by a specific person which society must recognize. Therefore in general the penal laws permit the revealing of secret in case of proper reason. The Proposal satisfies this viewpoint by connecting the possibility of revealing the private secret to the existence of good reason. Good reasons are all such situations, conditions, circumstances, etc. the weight and significance of which supercedes the interest attached to keeping the secret.

Good reason is one of the permitted cases of revealing the secret. There are such situations -- and the law must honor these also -- when revealing the secret is an "obligation." In cases of witnessing and providing expertise -- inasmuch as the witness or the expert have been released from their rights of immunity [appears wrong, reverse, redundant: perhaps it should be 'granted their rights of immunity'; however, sic. Translator] -- testimony corresponding to the truth must be given, true statements must be made even in the case if private secret is revealed by this.

5. In accordance with the Proposal's use of the word, in this fact situation also it designates that harmful result with the expression "significant harm

to interests" the occurrence of which can be considered to be qualifying circumstance.

Violation of Mail Secret

To Paragraph 178.

1. The nature of communication made during the course of human contacts will determine in what circles it can become known. Definition of this personal circle is the interested party's right. It is a social need that learning the content of communications should be limited to this circle. Protection of this social need is primarily the interested parties' task, they must take care that the content of their communications should not be learned by unauthorized persons. Therefore the requirement is that the communication should be in such form which — besides expressing: the possibility of learning the communication is desired to be limited — at the same time insures that the unauthorized person should be able to learn it only in ways which are not permitted.

Learning the communication's content in unpermitted ways is dangerous to society in such an extent that declaring it to be an offense is justified.

2. As this appears from the above, designating the object of commission has great significance in determining the fact situation.

It is not sufficient to designate the objects of commission as "letter",

"restricted document" and "telegram". The method of communicating thoughts by recording them on magnetic tape is also popular today. And with the advance of technology those means cannot be foreseen which will also be suitable to record thoughts and to forward them. Therefore the use of such a concept of general validity is necessary which includes all such possible means without naming them more closely.

The Proposal the word usage "sealed shipment containing message" [communication] to be the most suitable for such comprehensive designation.

The sealed nature of the shipment expresses that demand of the thought's transmitter that what is communicated by him should be learned only by authorized persons — primarily the addressee. Keeping the communication's content secret is moral obligation; it can be expected of all those who learn the content of sealed shipment that they should not forward it contrary to the sender's wish. But it is not practical to draw the penal law protection so broadly. Therefore the fact situation punishes only the intentional behavior, that person who acts in order to learn the shipment's content. Therefore it specifies the obtaining and the opening of a sealed shipment, and giving it to an unauthorized person — in order to learn the content of it — as the committing behaviors.

3. The fact situation's second part punishes the deciphering of shipments forwarded by telecommunication equipment. The word "deciphers" expresses the effort exerted in order to learn the communication's content, so that it is purpose-oriented behavior.

Slander [also Libel]

To Paragraph 179.

1. Honor is favorable judgement developed in the social surroundings about the person, his traits, character, behavior. Human dignity is expression of that demand that the person, the individual should be treated in accordance with the minimal requirements of cultured method of contact developed in society. When the law protects honor as an object of penal law, this protection also has effects in two directions: it protects the individual, the person against acts which harm -- endanger -- partly his respect in society, and partly his human dignity.

This duality of the legally protected object provides guidance to a certain extent also for the demarkation of the two fact situations protecting honor: slander and defamation. The slander provides protection [sic!!] primarily against those acts which attack the injured party's social respect, social valuation, and the fact situation of injury to honor [defamation] protects the person's, the individual's human dignity.

2. With respect to separating the two offenses, the Proposal starts out from that fact of experience that people -- in great generality -- believe facts better than mere statements; facts have greater convincing power. Therefore facts have the dominant role in forming opinions, thus also in passing favorable value judgements developed in connection with the person's, the

individual's honor. Since slander creates the danger of destroying, changing the favorable value judgement developed in society, the committing behavior must also be connected with a fact suitable to do so.

Therefore one of the methods of separating the two offenses is that the activity which commits slander is in connection with a fact.

From the nature of slander follows that it is suitable to injure honor only in that case if the fact suitable to do so comes to the knowledge of another person. But violation of human dignity takes place already when the injured party learns of the violation. Therefore the Proposal defines commission in another's presence as an element of slander's fact situation.

3. The behavior which commits the slander is: stating, spreading a fact, or using an expression referring directly to the fact.

Stating the fact is: communication based on personally acquired information about some phenomenon having existed in the past or existing in the present. Stating a fact in its uniqueness and definiteness is to be sharply distinguished from a value judgement made in general terms, suitable to injure honor. Stating a fact is accomplished if the harming statement defines in a uniquely recognizable manner the injured party's action.

Spreading [something] is forwarding the fact situation. The fact in this case is based on the experience, observation of others. Direct expression referring to the fact is: selecting and forwarding some characteristic movement

from a fact in such a way that reasonable speculation can be made from this for the whole.

Stating some fact, spreading some fact, or using an expression referring directly to the fact is suitable to harm [someone's] honor if the fact -- in case it is true -- can be the basis for initiating penal, rulebreaking, or disciplinary procedure against the harmed party, or can decrease in any way the injured party's social appreciation.

4. Anyone can be the passive subject of slander; even such person who has no [legal] ability to act, for example child, mentally ill. that is, certain social expectations exist against these persons also.

5. Qualified cases of slander are: a) commission with base reason or purpose. The Proposal consistently represents that standpoint that besides the base reason it is necessary to designate the base purpose also, because not all acts with such motivation can be included under the former.

b) The General Part contains (Paragraph 137. point 10.) the definition of the concept of general public. It is fundamental for this qualifying circumstance also that the important thing is not the method of commission -- resulting in general publicity --, for example commission through press or by means of multiplication, this is not the fact which increases the action's dangerousness to society, but that consequence that statement of the fact, etc. which accomplishes the slander comes or may come to the knowledge of many, possibly innumerable persons.

c) The significant harm to interests — as qualifying circumstance — is a factor appearing on the objective side of an offense against a person, increasing the degree of dangerousness to society. Therefore causing harm to interests is also an element of fact situation in compulsion (Paragraph 174.) and is a qualifying circumstance in violating private secret and the mail secret (Paragraphs 177. and 178.), etc.

6. Slander can be established only if the action committed did not at the same time harm or endanger some other legally protected object, that is, if through the person of the harmed party some other legally protected object did not suffer injury. But if a more severe offense did occur, the perpetrator's guilt must be established in the more severe offense.

Based on this consideration, not slander but agitation (Paragraph 148.) must be found if the stated, etc. fact is suitable through the person of the harmed party to for example generate hatred against some nationality, and the perpetrator carried his act for this purpose.

7. The illegality (dangerousness to society) of slander — according to judicial practice — is excluded by a) fulfillment of the obligation to report when it is the citizen's duty (denunciation, registration); b) statement of a fact made during the course of fulfilling the witnessing obligation; c) declaration made in a case in progress before the authorities verbally or in a document regarding the case, in the interest of judging the case and

made within the necessary framework; d) fulfillment of official obligation, for example bringing the material of personal record to the knowledge of the authorities; e) report [news report] made of a court trial or session of a national organ.

Injury to Honor

To Paragraph 130.

1. By creating the fact situation of injury to honor, the law now in effect also provides penal law protection against actions which harm human dignity. Though indirectly — as the justification attached to Paragraph 179. also pointed this out — the fact situation of slander also protects the human dignity.

2. In the foregoing (see the justification attached to Paragraph 176.) reference has already been made to that fact also that according to the Proposal's standpoint when deciding the question of whether some behavior dangerous to society reaches the level of offense, we must start out not only from the character of the interest we desire to protect but it also must be taken into consideration what is the degree — in general — of dangerousness to society of those concrete acts which have actually been accomplished, which occupy the crimefighting organs.

It is the experience of the sentencing practice that a significant part of the actions which qualify as injury to honor according to the law now in

effect does not reach the degree of dangerousness to society which defines the level of offense.

It has already been discussed in differentiating between slander and injury to honor that slander is accomplished only by the use of expressions referring directly to some fact, but injury to honor is also by the use of such expression which does not refer directly to the fact, from which unambiguous conclusion cannot be made for a specific event, happening, phenomenon. In practice the expression which injures honor in numerous cases appears in the form of adjectives which harm honor. Such adjectives are for example ass, stupid, goofy, etc. and are often spoken under such circumstances that in the specific case -- even with respect for the personal relationship between the user of the expression and the addressee -- the act is not dangerous to society. But if the use of these expressions is motivated by their insulting content, character, being held responsible is a social demand. But being held responsible is not unconditionally identical with declaring it to be an offense.

3. The fact situation determines two behaviors for committing harm to honor: use of an expression suitable to injure the honor, or committing some other such act. Other such acts are for example pointing to a part of the body, grimacing, other pointing, etc.

But in general the degree of dangerousness to society of the berating abuses,

nointing, etc. does not exceed the degree of dangerousness to society of rulebreakings. Therefore the Proposal's evaluation of the basic case of injury to honor according to the law now in effect is that the degree of dangerousness to society manifested in it does not reach that level which would justify declaring it to be an offense.

4. However, those cases demand more severe valuation in which the method of committing is more rude, or when the offense is carried out under such circumstances which harms the honor in an increased extent, manner.

One of the characteristics of our society is that the citizens are participating in the handling of public matters in increasing numbers. During the course of our development a part of the state's tasks have become social tasks. Such tasks are carried out by the citizens in the course of public assignments. Penal law protection of acting in the public's interest cannot depend on the form of this. Action in the public interest without assignment demands equal protection with the fulfillment of public assignment. In the same way increased protection is justified also in that case when the injured parties suffer the injury to honor during the course of performing their work.

The reasons for declaring commission before the general public to be punishable agree with those mentioned in the justification attached to Paragraph 179. section (2) point b).

5. The present judicial practice for example classifies slapping on the face

which causes discoloration but when the skin is not broken, and thus it does not qualify as bodily harm. as injury to honor committed in a conspicuous rude manner and calls it bodily injury to honor; practice includes here the flapping of the injured party's nose, pouring filthy liquid on his body, knocking off his hat, spitting on him, etc. Grabbing, petting the injured party's body or some part of his body, if it is not directed at satisfying or arousing sexual desire, is also injury to honor.

The Proposal calls this more rude manner of committing injury to honor as injury to honor committed in a "bodily" manner.

Desecration

To Paragraph 131.

The fact situation of desecration provides protection against those acts which dishonor the dead or his memory in the manner defined in the fact situations of slander or injury to honor. The offense may be directed against the favorable social value judgement developed about the dead person, or directly against the corpse or the objects assigned to the dead person's memory. It appears also from the fact situation's name that the offense's legal object is the respectful feeling connected to the dead person.

Proof of Facts

To Paragraph 132.

Statement, etc. of an untrue fact unconditionally establishes the fact situation of slander. Statement, etc. of a true fact may also be slander, but the Proposal permits that proof of facts be ordered if the public interest or anyone's just interest motivated the perpetrator to state, etc. the fact.

Public interest is everything that affects the state, society, their institutions, as well as the individual collectives. The interest's character is immaterial, all facts affecting the political, economic, cultural, etc. life can be subjects of proving reality. Private interest may attach to all such facts which affect the injured party in personal, family, property, etc. respects. But it is a condition for proving the facts that "justified interest" be involved.

When ordering that the facts be proven, it must be examined in what relationship the interest attached to having accomplished the statement, etc. of the fact and the legal injury caused by the attack on honor stand with each other; isn't there a lack of proportion between the two types of interests.

Proof of facts is not in order if the injury to honor was done with berating, abusive expressions without factual content. If the act attacks a woman's honor, proof of the facts is not excluded but it must be examined with increased care whether the complaint referring to it can be entertained.

From the viewpoint of establishing the correctness of stating, etc. the fact complete harmony between the stated and the proven facts is not indispensably necessary. The proof of facts is successful also if the essence of the statement of facts has been proven true.

Complaint and Desire

To Paragraph 183.

1. The injury caused by offenses to freedom and human dignity is primarily private in character. The nature of a part of these offenses is such that in many cases it depends on the injured party's judgement, on the relationship existing between him and the perpetrator whether the action which accomplishes the legal fact situation is dangerous to society at all.

Therefore section (1) makes punishability of the perpetrator of violating the private home, violating private secret, violating the mail secret, slander, injury to honor, and desecration dependent on submission of complaint.

But the characters of compulsion and violation of personal freedom are such that the actions which accomplish the legal fact situation are dangerous to society regardless of the injured party's judgement. Thus it is not justified to link the punishability of these two offenses to complaint.

2. Desecration injures the respectful feeling of the deceased person's relatives and heirs, therefore section (2) authorizes the relatives and heirs of the deceased to file the complaint.

2. [Expression of] desire is precondition of punishability in the case of slander or injury to honor committed to the injury of a person enjoying diplomatic or other personal immunity based on international law. The injured party must declare this through diplomatic channels.

Chapter XIII.

Traffic Offenses

The Proposal includes traffic offenses in a separate Chapter. This does not mean that an independent "penal traffic law" is developed. The general penal law principles and rules are valid for traffic offenses also, but this structural solution emphasizes their relative independence. That is, the penal law must take it into consideration that all branches of traffic, and particularly traffic on the public roads is growing very rapidly, and it is an increasingly important component of society's life, with unique social conditions, legal and moral rules.

The subject of offenses placed in Chapter XIII. is the safety of railroad, air, water, and public road traffic. But the Proposal orders that causing injury or death not on the public roads by violating the rules of driving vehicles on the public roads are also to be punished as public road offenses (Paragraph 191, sec. (1)). With respect to their character these behaviors are also traffic offenses.

Offense Against Traffic Safety

To Paragraph 194.

1. The order protects the safety of railroad, air, water, and public road traffic against attacks by persons who are not subject to traffic regulations ("outsiders").

Section (1) defines the offense's basic case, with several committing behaviors. The first one among these is causing damage to the objects of commission listed in the Proposal.

Among the objects of commission the "traffic roadway" and "vehicle" are comprehensive concepts. Traffic roadway is the railroad track, enclosed path of electric street car, the public road, etc. As used in this order, vehicle can be railroad, aerial, waterway or public road vehicles alike. The "operating equipment" is such equipment, structure, apparatus, etc. which directly serve the safety of traffic, and furnishings of these are such auxiliary objects the purpose of which is indirectly this same. The expressions of "creating obstacle" or "removing a traffic signal" do not require interpretation.

"Changing a traffic signal" is any kind of unauthorized modification of the signal. "Misleading signal" is a false signal suitable to cause mistake, misleading.

The general rules provide guidance for interpreting violence or threat.

Listing the committing behaviors is not complete: according to the Proposal the offense can also be committed "in other manners."

2. The offense occurs if the perpetrator endangers the safety of traffic. Such concrete situation must be understood by this when the danger of accident exists which injures the life or bodily integrity of others or causes significant material damage. In the absence of this the act accomplishes some other offense, for example damaging.

3. The qualified cases defined in section (2) determine differentiated responsibility — more strict than that in the agglomeration rules — for that case if more severe consequence (at least severe bodily harm) derives from the offense against traffic safety, with respect to which the perpetrator is guilty at least of carelessness (Paragraph 15.). Light bodily harm must be valued within the limits of the penalty item for the basic case.

Lasting deficiency and severe deterioration of health must be interpreted in this Paragraph also according to the justification attached to Paragraph 170.

The Proposal considers it a result of similar severity if the offense causes mass accident. "Mass accident" is such accident as a consequence of which at least one person suffered severe bodily injury, and a larger number — at least nine — persons suffered injury (at least light bodily injury).

Causing a fatal mass accident is to be punished more severely -- according to section (2) point d). This is such mass accident as a consequence of which at least one person died and at least nine others were injured.

Section (3) determines the basic case and the careless formation of the qualified cases.

4. The reason for section (4) is that greater social interest attaches to avoiding the harmful consequence threatening the safety of traffic than to the unconditional punishment of the perpetrator. Not only the results listed in section (2) must be understood by "harmful consequence", but also other disadvantages deriving from the perpetrator's action. However, the order can be applied also if even though certain disadvantageous consequence did derive from the act, but this is negligible compared to the averted danger (for example the perpetrator causes some not significant damage by damaging the railroad's operating equipment, but after this he averts the danger of catastrophe).

The things explained in the justification attached to Paragraphs 17. and 18. provide guidance for the "voluntary nature" of averting the danger.

Endangerment of Railroad, Aerial or Waterway Traffic

To Paragraph 185.

1. Persons under the effect of railroad, aerial or waterway traffic rules can

be the perpetrators of this offense. These orders are determined by lower level statutes or by so-called rules of the trade (practice). In this order's application the rules concerning pedestrians and passengers cannot be considered traffic rules (Paragraph 191. sec. (2)).

Those employees of the transportation enterprises, plants, etc. who endanger the life or bodily integrity of another or of others by violating not traffic but other occupational rules, owe responsibility not on the basis of Paragraph 185. but for endangerment committed within the sphere of occupation (Paragraph 171.).

The behavior which commits the offense is intentional violation of traffic rules. The perpetrator's intent also encompasses as consequence the endangerment of the life or bodily integrity of another or of others. Even the remote possibility of the occurrence of harm provides the foundation for penal law responsibility.

The order's phrase "another or others" expresses that if the act endangers the life or bodily integrity of more persons, agglomeration does not have to be established. The number of endangered persons must be valued in meting out the punish ent.

2. The cases qualified according to section (2), the offense's careless formation and the order of section (4) about unlimited mitigation (omission) of the penalty are identical with the corresponding orders of Paragraph 184.

Endangerment on Public Roads

To Paragraph 186.

1. The offense can be committed by intentional violation of the rules of public road traffic. These rules are established by the KPESZ [Traffic Regulations for Public Thoroughfares]. But the orders concerning pedestrians and passengers cannot be considered traffic rules in the application of this Paragraph (Paragraph 191. sec. (2)).

2. The offense's result is direct endangerment of the life or bodily integrity of another or of others. "Direct danger" means realistic possibility of harm to life, bodily integrity or health, danger which is specific for the person and situation. Besides violating the traffic rule the perpetrator's intent also encompasses the endangerment.

The phrase "another or others" is interpreted identically with the explanations in the justification attached to Paragraph 185.

3. The offense's qualified cases (sec. (2)) are identical with those of Paragraph 184. section (2). But point d) of section (2) values the deaths of more than two people identically with the causing of a fatal mass accident. That is, the deaths of 3 or 4 people is not "fatal mass accident", if others were not injured. But considering the very serious result, more strict responsibility is justified.

The offense must be qualified exclusively according to sec. (2) point a) or b)

also if the perpetrator's intent extends also over the qualifying circumstances listed here. That is, causing severe bodily harm and its qualified cases do not have to be established in formal agglomeration besides endangerment on the public roads, because the above orders have already valued these also. The situation is different with points c) and d) of section (2). If the perpetrator's intent also encompasses the injured party's death, intentional killing of a human occurs.

Causing Accident on Public Roads

To Paragraph 187.

1. Section (1) defines a careless offense corresponding to Paragraph 186., but it draws the limits of penal law responsibility more narrowly.

The perpetrator can violate the rules of public road traffic either intentionally or out of carelessness. But offense according to this Paragraph takes place only if the perpetrator causes severe bodily harm by rulebreaking out of carelessness. The less serious result — light bodily harm caused due to carelessness, or careless endangerment — may serve as foundation for rulebreaking responsibility. Significant or particularly large damage caused due to carelessness by public road accident in social property is damaging according Paragraph 324. section (6).

2. The qualified cases defined in section (2) correspond contentually to points b) through d) of Paragraph 186. section (2), but with more lenient penalty items, since the perpetrator is guilty only of carelessness.

Driving a Vehicle while Intoxicated

To Paragraph 188.

1. According to KRESZ's Paragraph 4. section (1) point c) the person in whose organism there is alcohol originating from the consumption of alcoholic beverage may not drive a vehicle on public road. The rules of railroad, aerial or waterway traffic also prescribe similar prohibitions. Violation of the orders mentioned call for penal law responsibility according to the Proposal if the perpetrator drives a vehicle "in a condition influenced by alcoholic beverage." Such condition must be understood by this when it can be established on the basis of joint evaluation of the degree of the blood's alcohol concentration and of the clinical symptoms that the vehicle's driver is no longer capable of driving safely as a consequence of having consumed alcoholic beverage.

The Proposal qualifies intoxicated driving of a vehicle by itself — that is, without occurrence of more severe consequences — to be an offense if it represents increased danger to traffic safety, considering the type of vehicle and the character of the traffic thoroughfare. Considering these viewpoints, section (1) declares driving of any type of railroad or aerial vehicle in a condition influenced by alcoholic beverage to be an offense. In contrast with this in waterway and public road traffic only the driving of such motor driven vehicles involves penal law responsibility.

That vehicle is "motor driven" which is driven by a built-in power machine

[power device]. This is a broader concept than KRESZ's concept of a motor vehicle (KRESZ Appendix point II/b.). The agricultural tractor, the slow vehicle, bicycle with auxiliary motor and electric streetcar are also motor vehicles. Legal statute No 6. of the year 1973 concerning ship traffic distinguishes the floating work machine from waterway vehicles. The floating work machine may also be motor driven.

2. Paragraph 183. section (2) establishes the offense's qualified cases. The qualifying circumstances agree with the corresponding orders of Paragraph 187., but the penalty items are more strict.

The perpetrator can be held responsible on the basis of section (2) only if his condition influenced by alcoholic beverage is in causative relationship with the consequences listed here, and he is guilty of carelessness with respect to these (Paragraph 15.). The causative connection between the consequences defined in the fact situation and driving a vehicle in a condition influenced by alcoholic beverage is relayed by violating some other traffic rule. This is the direct cause of the results listed in section (2). Intoxication is in direct connection with this traffic rule violation (for example the perpetrator brakes late due to his intoxication and thus causes death).

Intoxicated driving of a vehicle is intentional offense. The responsibility for the qualified cases also conforms to this (differently from Paragraph 187. section (2) these are not misdemeanors but felonies).

3. Driving a non-motor-driven water vehicle or floating work machine, or a non-motor-driven vehicle on public roads in a condition influenced by alcoholic beverage is not an offense. But if the person driving a vehicle in such condition causes the consequences listed in section (2), he violates traffic safety in an extent similar to the driving of vehicles listed in section (1) in an intoxicated condition. Therefore in such case the perpetrator -- according to section (3) -- owes the same kind of penal law responsibility as in the cases of section (2).

Prohibited Transfer of Control of a Vehicle

To Paragraph 189.

1. The order is connected to Paragraph 188. The Proposal punished not only the intoxicated drivers of vehicles but also those who transfer the driving of vehicles listed in section (1) to a person in a condition influenced by alcoholic beverage. The justification tied to Paragraph 188. provides guidance for the concept of "motor driven" vehicle.

Those who are unsuitable to drive vehicles for other reasons represent danger to traffic safety similar to the intoxicated drivers. Therefore transferring the driving of a vehicle to such a person is also an offense. "Unsuitability" is such condition which actually makes someone incapable of safe driving. Its reasons can be of several kinds (childhood age, illness, unfamiliarity with driving, etc.).

2. Section (2) establishes the offense's qualified cases. The person transferring control of a vehicle indirectly endangers traffic safety. Therefore his penal law responsibility is milder than that of the intoxicated driver. If the person taking over the driving causes severe bodily injury by his behavior to be punished according to Paragraph 187. section (1) or to Paragraph 188. section (2) point a), the person permitting the transfer answers according to Paragraph 189. section (1). Otherwise the penalty items of the qualified cases according to section (2) are lower than the ones defined in Paragraph 188. section (2).

The person's action who permits the transfer of driving of the vehicle qualifies according to Paragraph 189. section (2) only if with respect to the result he is guilty of carelessness (Paragraph 15.).

In case of prohibited transfer of control (driving) of the vehicles listed in Paragraph 188. section (3) the person transferring control can at the most be held responsible for causing a public road accident (Paragraph 187.), or for careless endangerment of waterway traffic (Paragraph 185. sec. (3)).

Abandonment in Trouble

To Paragraph 190.

1. The Paragraph attaches penal law responsibility to violating the so-called "obligation to stop" which burdens the driver of a vehicle involved in a traffic accident.

Driver of a vehicle "involved in a traffic accident" is that driver of a vehicle who is participant (either the causer or the victim) of the accident.

There are two situations of the committing behavior. According to the first situation that driver of a vehicle is to be punished who does not stop at the scene of the accident.

According to the second situation that driver of a vehicle owes responsibility who though formally fulfills his obligation to stop, but leaves the scene after this without ascertaining whether anyone was injured or or whether anyone needs assistance because of danger directly threatening life or bodily integrity.

2. Abandonment in trouble is a subsidiary offense compared to failure to extend assistance (Paragraph 172.). The driver of a vehicle involved in a traffic accident answers according to Paragraph 172. if he could reason from the circumstances that someone was injured during the course of the accident or someone's life or bodily integrity came into direct danger, and acquiescing in this possibility he does not stop at the scene of the accident, or leaves there even though there actually was a person needing assistance.

Interpretive Orders

To Paragraph 191.

1. The interpretive order defined in section (1) extends the effect of orders concerning offenses committed on public roads to accidents committed not on

the public roads. This does not mean that all rules of the KPESZ bind those who drive vehicles elsewhere than on the public roads. But there are such fundamental rules of driving vehicles to which one must conform even away from the public roads in the interest of avoiding accidents. Violation of these also harms the safety of traffic. That is, the Proposal stands on that theoretical principle that a result caused by such traffic rule violation away from public roads — due to its character and special manner of committing it — cannot be considered to be an offense against the person defined in Chapter XII., but it is a traffic offense.

Judicial practice must work it out which are those basic traffic rules which must be observed even when driving vehicles off the public roads.

But in the interpretation of section (1) the orders of Chapter XIII. can be applied to accidents away from the public roads only in the case of causing injury or death. In accord with this the basic cases of intoxicated driving of vehicles or prohibited transfer of control over a vehicle (Paragraph 183. sec. (1), Paragraph 189. sec. (1)) cannot be committed away from public roads.

Lower level statutes can also extend application of the KPESZ over such areas which are not public roads. From the penal law's viewpoint also such areas are to be considered public roads.

2. The purpose of the interpretative order defined in section (2) is that the traffic rule violations concerning pedestrians and passengers should not be

able to be judged according to the orders of Chapter XIII. That is, this would mean excessive extension of the penal law responsibility.

The pedestrian or passenger who violated the traffic rules — depending on the results — can be held responsible for offenses defined in Chapter XII. (for severe bodily harm committed due to carelessness or for manslaughter).

Chapter XIV.

Crimes Against Marriage, Family, Youth and Sexual Morals

The orders of Chapter XIV. — in harmony with the Constitution, the Const. [Code of Family Law] and law No IV. of the year 1971, concerning youth — protect the institutions of marriage and family, development of youth, as well as the order of sexual contacts which have been formed and accepted in society. These legal objects are closely interrelated with each other, the Chapter is divided into two Titles considering their differences.

There are orders in other Chapters of the Proposal also (thus particularly in Chapter XII. concerning the offenses against the person) which protect the legal objects mentioned, but not exclusively, or not primarily.

Title I.

Crimes Against Marriage, Family and Youth

Title I. of Chapter XIV. summarizes the offenses against marriage, family and Youth.

The Proposal protects the institution of monogamous marriage by punishing bigamy (Paragraph 192.). Fact situations of the other offenses located in the Title take care of penal law protection of the family, family ties, and particularly family members of minor age and persons of minor age in general.

Changing the family status (Paragraph 193.) harms the injured party's social and legal situation within the family — based on relationship or adoption.

Changing the placement of a minor (Paragraph 194.) hinders the enforcement of the authorities' resolution ordering the child's placement and by this it endangers the minor's development.

By declaring the endangerment of a minor to be an offense (Paragraph 195.) the Proposal protects the physical, intellectual or moral development of minors both within the family and outside of it.

The family's members — within the sphere and under the conditions defined by statutes — are obligated to take care of supporting each other. Violation of this obligation harms the institution of family. Therefore according to the Proposal the failure to provide support (Paragraph 196.) is an offense.

Bigamy

To Paragraph 192.

1. The offense's fact situation has two forms. That person is to be punished for bigamy who knows that his earlier marriage is valid and in spite of this

enters into another marriage. That unmarried person must also be held responsible according to this order who enters into a marriage knowing that the other party's marriage exists.

Paragraph 2. section (1) of the Csft. [Family Code] gives orders about entering into marriage. The earlier marriage exists until the court's judgement made in the invalidation suit declares it to be invalid (Csft. Paragraph 13. sec. (1)). Only the civil court can decide about invalidation. In spite of this the suspension of penal court proceedings is not mandatory even with respect to the second sentence of Be. Paragraph 169. section (2) [Penal Process Law]. That is, "application of the penal law" (whether an offense was committed or not) does not depend on the earlier marriage's validity. At the most, it may have significance from the viewpoint of meting out the penalty that the earlier marriage ceased to exist after the offense was committed, or was declared to be invalid, and by this the new marriage becomes valid (Csft. Paragraph 7. sec. (2)).

The time point of committing the offense is when the new marriage is entered into.

2. Bigamy also necessarily accomplishes the falsification of public document according to Paragraph 274. section (1) point c), yet only bigamy — as special fact situation — has to be found. But agglomeration of offenses may come into existence between the public document falsification defined in Paragraph 274. section (1) points a) and b) and the bigamy (for example someone

falsifies his personal identification [a small booklet carried by everyone over 16 years of age. Translator.] and enters into marriage using this).

Changing the Family Status

To Paragraph 193.

1. The general behavior which commits the offense is to alter another's family status. The perpetrator prevents or falsifies the practicing of rights and fulfillment of obligations by this which derive from the family situation.

Going beyond the general committing behavior, the Proposal expressly refers to two characteristic variations of committing this: exchange of a child or smuggling [a child] into another family. "Exchange" is placing two children in the respective places of each other. "Smuggling" into another family represents misleading behavior.

A person of adult age can also be the offense's injured party, though this occurs rarely.

With respect to falsification of public document defined in Paragraph 274. section (1) point c) the changing of family status is a special fact situation.

2. The offense's dangerousness to society is increased if an employee of a medical or rearing institution commits it within the sphere of his occupation. The qualified case defined in section (2) evaluates this.

Section (2) punishes exclusively the qualified case's careless form.

Altering the Placement of Minors

To Paragraph 194.

1. Anyone can be the offense's subject, but it is committed mostly by that parent whose child is placed by the authorities with the other parent or with a third person (for example relative, in institution).

The authorities' resolution ordering the child's placement is first of all the court's decision, including the legally not final temporary measure also (Csjt. Paragraph 76. sec. (3)). Further, such are the either legally final or not final but enforceable decisions of custody authorities regarding taking the minor into the state's custody (order No 20/1969. (V. 13.) Korm. concerning state care for minors).

If the child of the parent living separately is placed with another person, due to lack of agreement by them the custody authority will designate the parent who exercises parental supervision (Csjt. Paragraph 72. sec. (2)). Such resolution makes no decision about the child's placement.

2. The committing behavior has two forms according to whether or not the resolution of the authorities ordering the minor's placement has been carried out. The perpetrator frustrates further enforcement of of the already executed resolution of the authorities if he takes away the minor "for the purpose of lastingly changing his placement". In the absence of the intent mentioned, the offense's first form materializes (thus for example if the parent, even

though without permission, takes the minor with him but only in order to spent a few hours with him).

The other form: keeping the minor "hidden, or in secret" hinders enforcement of the resolution. By "keeping hidden" the perpetrator places the minor in such a manner as to make him unavailable for the person entitled to have him, and at the same time disguising his whereabouts. He keeps the minor "in secret" if he does not disclose where he can be found, or relates false data concerning his whereabouts.

Keeping the minor hidden or in secret -- as opposed to taking him away, which is a one-time behavior -- is a so-called condition-offense. Its lapse begins on the day when the keeping hidden or in secret ends (Paragraph 34. point d)).

It is a fact situation element of both formations that it be committed without the entitled person's agreement (with whom the authority placed the minor).

The reason for committing the offense (attachment to the minor, revenge, material reasons, etc.) must be valued within the sphere of meting out the penalty.

Endangerment of a Minor

To Paragraph 195.

1. Such person is the subject of the offense's first formation (sec. (1)) who owes increased responsibility for the minor's physical, intellectual or moral development. Such are primarily the parent's, and further all those who are

obligated to see to the minor's rearing, supervision or care by family law regulations (for example, the guardian). Beyond this, others can also commit the offense who has been appointed — with permanent or temporary character) — to the minor's rearing, supervision or care, or who has accepted it.

The parent can also keep in contact with his child — either legally or illegally — if his right of parental supervision has ended, or is suspended (Paragraph 92. of the Csft.). In this case the parent is to be considered a person "obligated for the minor's rearing or supervision" from the viewpoint of section (1).

Ptk. Paragraph 12. section (2) defines the concept of minor.

2. Rearing, supervision and care — all everyday concepts — need no detailed interpretation. Rearing, as a series of goal-oriented and not goal-oriented effects, supervision as continuous and unbroken control, care as insuring the minor's normal physical development encompass the most varied legal and moral obligations. The Proposal does not detail these.

3. The behavior which commits the offense is severe violation of obligations. This can be on one occasion, but can also be composed of repeated violations of the obligations.

The offense's result is endangerment of the minor's physical, intellectual or moral development. It can be judged only by taking all of the case's circumstances into consideration, carefully analyzing the minor's personality, age

and specific situation, whether the danger of physical, intellectual or moral development occurred, or whether it can be traced back to the perpetrator's behavior.

Endangerment of the physical, intellectual or moral development also each separately accomplish the offense's fact situation, but usually they occur together. But according to the minor's age and personality, the character of obligation violations, and the given case's circumstances in some cases the physical, in others the intellectual, in still others the moral endangerment is characteristic.

4. The offense's first form cannot be established in formal agglomeration with such offense the legal object of which is identical but its penalty item is more severe. Such are for example the offenses against sexual morals, if the perpetrator commits them to the harm of the person under his rearing, supervision or care (for example corruption: Paragraph 201. sec. (3), Paragraph 202. sec. (3)).

Besides section (1) the perpetrator's behavior can also accomplish the legal fact situation of failure to provide care (Paragraph 173.). In this case only section (1) of Paragraph 195. must be established. As a special order, this order protects the minors.

5. Section (2) defines the offense's second form. Anyone of adult age can be the subject of this who is not obligated to rear, supervise or care for the minor.

The committing behavior is "inducement or endeavor to induce" for an offense or to lead a corrupt lifestyle. Conceptually this is incitement, or attempt for the same as the *sui generis delictum* [Lat., precise translation unknown to Translator; loosely: "his own type of crime". Translator.]

Such punishable acts must also be understood by "offense" which are committed by a person of childhood age (Paragraph 23.) or by such person of youthful age who cannot be punished for his act for example due to the lack of his ability to reason (Paragraph 24. sec. (1)).

The "corrupt way of life" is not an isolated, one-time behavior, but means such morally objectionable life conduct lasting for a longer time which does not yet accomplish an offense (for example vagrancy, panhandling, etc.).

Only such minor can be the offense's injured party whose moral development can already be harmfully influenced — considering his relative intellectual development.

The case of endangerment of a minor regulated in section (2) can be established only if a more serious offense does not occur.

If the person of adult age induces or endeavors to induce a person of minor age to lead a corrupt way of life, the minor's endangerment must be found.

If the person of adult age induces a minor to commit an offense, endangerment of the minor must be found if the act the minor was induced to do (for example

lust as business: Paragraph 204.) is to be punished not more severely than loss of freedom ranging to three years. But if the act's penalty item is more severe than loss of freedom ranging to three years (for example robbery: Paragraph 321.), the adult must be held responsible as instigator or as indirect culprit.

If the person of adult age endeavors to induce the minor to commit an offense, in general it is qualified as endangerment of the minor. Such behavior represents preparation for offense (Paragraph 13. sec. (1)), but the given offense can be qualified as preparation only if its penalty item is more severe than loss of freedom ranging to three years.

Generating a harmful habit (Paragraph 283.) accomplishes the legal fact situation of Paragraph 195. section (2) if the endeavor to induce or providing of assistance for abnormal enjoyment of narcotic materials is not occasional in character but when it is to be considered inducement or endeavor for inducement to lead a "corrupt way of life." Endangerment of a minor can be separated in a similar manner from such rulebreakings as "serving alcoholic beverage to a person of youthful age" and "making him drunk" (order No 17/1968. (IV. 14.) Korm., Paragraphs 21. and 22.).

Failure to Support

To Paragraph 196.

1. Section (1) insures fulfillment of the support obligation based on the

family law statute, by means of the penal law. Penal law consequences are not attached to violating the support and living allowance contract (Ptk. Chapter XLIX [sic]).

According to the Proposal nonfulfillment of the support obligation "specified in the authorities' enforceable decision" is an offense. Such decision can be the civil court's judgement or temporary measure, as well as the custody authority's decision setting forth the fee for care. "Enforceable" decision can also be a legally not final decision.

According to the rules of civil law the support obligation represents enforceable demand, and these rules also determine the limits of penal law responsibility. If possible, fulfillment of the support obligation must be enforced by means of the civil law, but it is not a condition for the offense that enforcement of the decision be attempted and remain unsuccessful.

2. The perpetrator is responsible only to that extent to which he does not fulfill his support obligation "due to his own fault". The offense is intentional, and the perpetrator's own fault can be found if he is guilty of at least contingent intent with respect to the failure's reason.

It does not release the perpetrator from responsibility if the state temporarily provides the support instead of him (order No 12/1974. (V. 14.) MT [Council of Ministers] Paragraph 7.).

3. In the interest of a child entitled to support, section (2) extends the

penal law responsibility also to that man who is obligated to provide support without finding of paternity (Csjte. [expansion uncertain; some derivative of or related to Csjt., Family Code Law. Translator.], Paragraph 43.). But in this case only the court's legally final decision can lay down the foundations for penal law responsibility.

4. According to Paragraph 196. section (3) the perpetrator is to be punished more severely if he exposes the entitled person to "severe privation". This is the situation when due to nonfulfillment of the support obligation the person entitled to support suffers need of the goods which serve to satisfy the elementary requirements of life.

Finding of this qualified case occurs only rarely, because the state and social organs or third parties mostly avert the severe need. The perpetrator is guilty of intent or carelessness with respect to severe need as a result (Paragraph 15.).

Usually the minor entitled to support is not under the perpetrator's rearing, supervision or care. Therefore the offense defined in Paragraph 195. section (1) does not occur if nonfulfillment of the support obligation endangers the minor's physical development.

5. In the interest of the entitled person, the reason which terminates punishability according to section (4) urges the perpetrator to fulfill his support obligation after commencement of the penal proceedings. But if he subjected

the entitled person to severe deprivation, complete immunity is not justified.

4. Failure to support may be in agglomeration with avoiding work as a public menace (Paragraph 266.).

Title II.

Crimes Against Sexual Morals

Title II. of this chapter contains the offenses against sexual morals.

Forced intercourse (Paragraph 197.) is the most severe attack against a woman's sexual freedom. The Proposal also protects the sexual freedom when it punishes violence against modesty (Paragraph 198.) and unnatural forced perversion (Paragraph 200.).

The Proposal also punishes homosexuality — besides the case of forced commission — if it endangers a minor's healthy sexual development (Paragraph 199.). Otherwise it is not necessary to use the means of penal law against it.

By punishing corruption (Paragraphs 201. and 202.) the Proposal protects the healthy sexual and moral development of youth against the dangers of sexual life begun too early, in the age of adolescence. The offense is stressed endangerment of a minor (Paragraph 195.) and the variation which is to be punished more severely.

Incest (Paragraph 203.) endangers the new generation's healthy development, besides harming the socially recognized order of sexual relationships.

Prostitution and "its related acts" (Paragraphs 204. through 207.) are characteristic forms of manifestation of the parasitic way of life, and are often coupled with the commission of other offenses, or with criminal way of life.

The Proposal punishes the so-called exhibitionism as violation of modesty (Paragraph 208.). Regulating it separately and placing it into this chapter were made necessary mainly by its unique sexual motivation.

Title II. ends with supplementary orders connected to the offenses' fact situations: Complaint (Paragraph 209.) and Interpretive Order (Paragraph 210.).

Forced Intercourse

To Paragraph 197.

1. Forced intercourse is the most severe attack against the woman's sexual freedom. Only a woman can be the offense's injured party.

The offense's fact situation has two forms. The common fact situation element of these is the intercourse. From the penal law viewpoint — which does not cover the biological concept — the intercourse is complete if the man touches his sexual organ to the woman's sexual organ with the intention of intercourse. Thus a girl child can also be the offense's injured party, who in the biological sense is incapable of intercourse.

It is also a common fact situation element that the intercourse take place "outside the marriage community". Forced intercourse during living in the community of marriage is not an offense.

Forced intercourse which takes place after the community of marriage is terminated injures the wife's sexual freedom at an extent which requires penal law protection. If the wife refuses intercourse with the intent of permanency, the living community usually breaks up.

2. Not only a man but also a woman can accomplish the legal fact situation's first form, forcing intercourse. Thus the forcing can be aimed at the injured party having intercourse with the man applying the force, but also that the injured party have intercourse with another man. In this latter case the person applying the forcing can also be a woman.

Compulsion for intercourse can be done by violence or by threat. Violence is physical compulsion suitable to overcome serious resistance.

Paragraph 132. defines the concept of threat. But responsibility for forced intercourse can be based only on direct threats aimed against the emphasized legal objects (life or bodily integrity). The character and weight of such threat is essentially identical with that of violence.

Direct threat places immediately occurring disadvantage into prospection, and thus it is usually directed against a person who is present.

The milder variations of "sexual blackmail" (thus for example if the threat is not direct) accomplish compulsion (Paragraph 174.).

From the viewpoint of establishing violence as well as threat the injured person's personality, the preliminaries and the given situation (the injured

party's physical strength, seriousness of her resistance, was the threat suitable to cause "serious fear", etc.) must be carefully weighed.

3. Only a man can commit the legal fact situation's second form, as culprit. The perpetrator abuses the injured party's condition in such a manner which comes under the same consideration with violence or threat.

The injured party is in a condition unable to protect herself, if due to her physical attributes or condition cannot exert resistance. A child under twelve years of age must be considered unable to protect herself according to the interpretive order of Paragraph 210.

The injured party is in a condition of being unable to express her will if due to her physiological attributes or condition she is fully incapable of recognizing the significance, consequences of sexual contact. Therefore her "will", her possible "agreement" to the intercourse cannot be taken into consideration, thus this does not exclude holding the perpetrator responsible.

4. Section (2) defines the offense's qualified cases. According to point a) the perpetrator is to be punished more severely if he commits the offense by abusing the special relationship which connects him with the injured party. The order keeps such situations, connections in mind due to which the perpetrator owes increased responsibility for the injured party who depends on him to a greater or lesser extent.

Point b) punishes the most repulsive variation of forced intercourse. The same

occasion refers to connection between the acts in terms of time. It is a condition of the more severe qualification that at least two men have intercourse with the injured party, knowing of each others' acts. That person is also co-culprit of the offense who has intercourse with the injured party who is under the effect of violence or threat applied by his associate or associates, even though he himself does not use violence or threat.

5. Section (3) -- the unlimited mitigation of the punishment -- urges that the culprit give moral satisfaction to the injured party by entering into marriage afterwards. The consideration is not justified for other perpetrators, since the instigator or the accessory before the fact did not create sexual contact, and thus they cannot give her satisfaction.

In the case of section (2) point b) there can no longer be any moral satisfaction, therefore the Proposal excludes the possibility of unlimited mitigation with respect to this qualified case.

Violence Against Modesty

To Paragraph 198.

1. Violence against modesty is an attack against sexual freedom similar to forced intercourse, but generally less severe. For the most part the legal fact situations of the two offenses are the same. Therefore the things written in the justification attached to Paragraph 197. provide guidance for violence and threat, as well as for defense, or for the concept of the condition of being unable to express one's will.

This Paragraph protects the sexual freedom not only of the woman but also of the man. But the perpetrator and the injured party are persons of different sexes. Behavior corresponding to Paragraph 198., if it occurs between persons of the same sex, is to be punished as forcible unnatural perversion (Paragraph 200.).

2. Among the elements of the committing behavior, the concept of perversion needs interpretation. Perversions are — with the exception of intercourse — all acts severely harming modesty, which serve to arouse or satisfy the sexual urge. It is immaterial whether the public's concept considers the act to be "normal" or "irregular".

According to the public concept, acts not "severely" harming modesty or acts harming modesty but not of sexual character accomplish other offenses (for example injury to honor).

In general the Proposal attaches penal law consequences only to perversion between people. The so-called exhibitionism (see Paragraph 208.) is to be punished as violence against modesty. Otherwise the self-satisfaction or perversion performed by man [a human being] with an animal is to be punished only if it is done in such manner that it violates the public order (for example accomplishes disorderly conduct — Paragraph 271.).

Forcing to perform perversion or to have perversion tolerated to be performed differs according to whether the injured party performs or — and this is the more frequent — suffers the perverse act.

3. The qualified case defined in section (2) and the order of section (3) regarding unlimited mitigation of the penalty correspond to Paragraph 197. sections (2) and (3). But there is no need here for the qualified case corresponding to Paragraph 197. section (2) point b) because it is not frequent, or its dangerousness to society can be sufficiently evaluated also within the prescribed penalty item.

4. Violence against modesty committed together with forced intercourse on the same occasion cannot be found in agglomeration because the former "melts into" the latter, more severe offense.

Sexual Perversion Against Nature

To Paragraph 199.

Either man or woman can be the offense's subject. But only such person can be the injured party who has passed his [her] fourteenth year of life [sic]. In case of an injured party under twelve years of age unnatural sexual perversion using force (Paragraph 200.), and if the injured party has completed his/her twelfth year of life but not the fourteenth, corruption (Paragraph 201.) must be found.

The Proposal protects the healthy sexual development of an injured party under eighteen years of age also, even if he/she is considered to be of adult age through marriage (Ptk. Paragraph 12. sec. (2)).

Unnatural Sexual Perversion Using Force [Violence]

To Paragraph 200.

Forced unnatural sexual perversion injures the freedom of sexual life the same way as violence against modesty does (Paragraph 198.). The fact situation elements are identical, but here the perpetrator and the injured party are persons of the same sex.

The qualified case defined in section (2) also corresponds to Paragraph 198. section (2). The things written in the justification attached to Paragraph 197. and 198. provide guidance for interpreting the fact situation elements.

Perversion accomplished with a person who has not yet completed his/her twelfth year of life — according to the interpretation of Paragraph 210. — is violent unnatural sexual perversion.

Corruption

To Paragraph 201.

1. This Paragraph punishes that person who accomplishes sexual contact with a juvenile between the ages of 12 and 14 -- with his/her agreement. The perpetrator and the injured party can be persons of different or also of the same sex. The justification attached to Paragraph 198. contains the concept of perversion.

2. According to the perpetrator's age the Proposal draws the area of

responsibility differently, and in accordance with this there are two forms of the offense's fact situation. The perpetrator over eighteen years of age answers for corruption if (s)he either has intercourse or performs perversion with a minor under fourteen years of age. But the perpetrator under eighteen years of age is to be punished only for intercourse. That is, the personality of those under eighteen years of age is still undeveloped, and often they are barely older than the injured parties, to whom they are also more closely attached with emotional ties ("child [puppy] love"). Therefore it is not justified to hold them responsible by penal law — except for intercourse as the most severe behavior.

3. According to section (2) -- taking dangerousness to society into consideration — the endeavor to induce intercourse or perversion is a separate offense. Only a perpetrator over eighteen years of age can be punished for this.

4. Section (3) defines the qualified case of corruption according to sections (1) and (2). The perpetrator deserves more severe punishment also if (s)he commits the offense to the injury of a kin, who is not necessarily under his rearing, supervision or care. Otherwise the qualifying circumstances agree with those listed in Paragraph 197. section (2) point a).

5. Corruption according to sections (1) and (2) are punishable upon private complaint (Paragraph 209.). This makes omission of holding responsible by penal law possible, when it would not be practical.

However, the qualified case according to section (3) is punishable not only on private complaint, just as endangerment of a minor (Paragraph 195.) is not either.

To Paragraph 202.

1. The perpetrator is to be punished according to Paragraph 202. if (s)he himself does not have intercourse or perform perversion with the injured party but induces or endeavors to induce him/her to do this with someone else. This variation of corruption must be regulated separately because as participant in the offense defined in Paragraph 201. the perpetrator could not be held responsible in all cases.

2. Section (2) limits penal law responsibility to perpetrators over eighteen years of age in harmony with Paragraph 201. section (2).

If the perpetrator induces or endeavors to induce the minor to perform perversion with an animal or to perform self-satisfaction, (s)he is to be punished not according to Paragraph 202., but possibly for endangerment of a minor (Paragraph 195.).

Incest

To Paragraph 203.

1. Section (1) punishes sexual contact between direct line relatives. Such contact between adopter and adoptee is not subject to punishment.

"Perversion" must be understood to also include unnatural perversion (see the justifications attached to Paragraphs 198. and 199.).

2. Section (2) creates a reason which excludes punishability for a descendant under eighteen years of age, since his/her personality is not yet developed and is usually in a dependent situation of his/her ascending line relative.

3. The first form of endangerment of a minor (Paragraph 195. sec. (1)) cannot be found in agglomeration with incest according to Paragraph 203. section (1). That is, this latter is a special offense and is to be punished more severely.

Several offenses against sexual morals are considered more severely if the offense's injured party is under the rearing, supervision or care of the perpetrator, or is the perpetrator's kin (Paragraph 197. sec. (2) point a), Paragraph 198. sec. (2), Paragraph 200. sec. (2), Paragraph 201. sec. (3), Paragraph 202. sec. (3), etc.). Incest cannot be found in agglomeration with these qualified cases because they are to be punished more severely [than incest]. That is, the penalty items of the qualified cases also consider the dangerousness to society of incest aimed against an essentially identical legal object.

4. Paragraph 203. section (3) punishes only intercourse and unnatural perversion among sexual contacts between siblings, as the more serious ones.

Lust as Business

To Paragraph 204.

1. Woman as well as man can be the perpetrator of lust as business. Perversion between men and women, or between persons of the same sex also accomplishes the fact situation. The justification attached to Paragraph 198. provides guidance for the concept of perversion.

That person has intercourse or performs perversion as business who by this endeavors to obtain regular profit (Paragraph 137. point 7.).

Lust for business is performed for material compensation. The perpetrator enters into sexual contact with various persons, with more or less occasional character, and is indifferent towards the sexual partner's person. Such sexual contact which is not based or not exclusively based on material factors but also on more internal, emotional factors, does not accomplish the legal fact situation of Paragraph 204. That person who keeps changing his/her sexual partners for other than material reasons also cannot be punished according to the [this] order.

According to the Proposal, "conducting" [continuing] lust as business is an offense. This means that the perpetrator performs the mentioned sexual acts on more occasions, separate from each other. Such behavior exhibited on one occasion can be a rulebreaking.

2. If the lust for business is committed by a person under eighteen years of

age, the instigator in general must be held responsible not according to Paragraph 204. but according to orders to be punished more severely: for endangerment of a minor (Paragraph 195.) or for corruption (Paragraph 201.).

Promoting Lust as Business

To Paragraph 205.

1. Section (1) declares such behavior to be an independent offense which is conceptually being accessory before the fact.

Anyone can be the offense's perpetrator who controls an apartment (owner, renter, sub-renter, etc.). All rooms (kitchen, pantry, etc.) which belong to the apartment must be understood to be included.

"Making the residence available" can be for one occasion, but can also be with lasting character or for a longer period of time.

Making the residence available is done for the purposes of lust as business. This does not unconditionally mean the offense of lust as business (Paragraph 204.). The person who makes the apartment available answers according to Paragraph also if the lust as business is only a rulebreaking, or if its perpetrator cannot be punished for some [any] reason.

It is not a fact situation element of the offense that the apartment be made available for material compensation, though this is the typical case.

The reason for declaring the first formation of section (2) to be an independent offense is that a more strict penalty item compared to Paragraph 204. can be applied.

In practice the offense defined in the second formation of section (2) cannot occur in Hungary because all forms of prostitution are prohibited. Including it in the Proposal is justified by the agreement included in Article 2. of the international pact on the subject of suppressing the trade in human beings [slavery] and [suppressing] profiteering from the prostitution of others, dated in New York on the 21th day of March 1950 and published by 1 g 1 statute No 34 of the year 1955.

Deriving Support

To Paragraph 206.

1. Deriving support is an illegal form of income. The person whom the person conducting just as business is obligated by law to support does not commit the offense.

Being fully supported by deriving needs no interpretation. Such partial support means regular and not insignificant benefits which significantly raise the perpetrator's standard of living. The fact that the perpetrator has such legal income from which (s)he otherwise can make a living does not exclude establishment of the offense defined in Paragraph 206.

2. With being supported by pimping it does not have to be separately evaluated whether the perpetrator instigated his supporter to do lust as business (Paragraph 204.), or whether he made his apartment available for lust as business purposes (Paragraph 205. sec. (1)). Public menace indolence (Paragraph 266.) also melts into being supported by pimping without finding agglomeration of offenses.

Pandering

To Paragraph 207.

1. Section (1) defines the basic case's legal fact situation in pandering. Woman as well as man can be the offense's injured party. Among the elements of the committing behavior the "perversion" means perversion between persons of different sexes as well as perversion against nature.

"Recruiting for another" is a broader concept than inducement for intercourse or for perversion. It encompasses all such behaviors by which the panderer creates the opportunity for the sexual contact of others, whether or not the partners have already decided on this contact.

The "for the purpose of gaining profit" is an element of the legal fact situation which occurs in numerous orders of the Proposal, needs no explanation.

2. One of the partners "brought together" by the panderer may also be a person who conducts lust as business. It cannot be evaluated in agglomeration with

pandering that the panderer induced this person to do lust as business (Paragraph 204.) or that he made his apartment available to the partner for the purpose of lust as business (Paragraph 205. sec. (1)).

Support by pimping (Paragraph 206.) and pandering's basic case can be found in agglomeration of offenses if the supported person was not only in contact with his/her supporter but (s)he "obtained" the partners for the other.

3. According to section (2) pandering as business, which is the offense's particularly severe form, is to be punished more severely. For the concept of conduct as business Paragraph 137. point 7. provides guidance.

4. The more severely qualified case defined in point a) of section (3) evaluates when the panderer committed the offense to the injury of such person for whom he is increasingly responsible, or who requires increased protection.

Section (3) point b) threatens those cases of pandering with more severe punishment which are particularly dangerous considering the method of commission. By deception the perpetrator deceives the injured party or keeps him/her deceived regarding his true intent.

The justification attached to Paragraph 197. provides guidance for interpreting violence or direct threat aimed against life or bodily integrity.

5. Paragraph 207. section (4) punishes the agreement for pandering as business as a very dangerous behavior of preparation (Paragraph 18. sec. (1)).

Violation of Decency

To Paragraph 208.

Considering the nature of exhibitionism, the offense's subject in practice can only be a man, but it is not necessary to expressly declare this in the law.

The person "exposes himself in a manner violating decency" who displays his sexual organ in front of others intentionally, and permits it to be seen conspicuously.

Displaying the sexual organs "in front of others" occurs if at least two persons can see it. But the two persons do not necessarily have to be present together.

The perpetrator is to be punished according to Paragraph 208, if he displays himself "for the purpose of satisfying his sexual desire." The unique character of the act is provided by the sexual satisfaction deriving from displaying the sexual organs, and it is not a prelude for another sexual act. In absence of this purpose the behavior can accomplish some other offense (for example disorderly conduct, violation of honor, etc.).

Complaint

To Paragraph 209.

Forced intercourse, violence against decency, and the milder cases of

corruption are punishable upon private complaint according to the Proposal (Paragraph 31, sec. (1)). The primary reason for this is consideration for the injured party. But in more severe cases the public interest attaching to prosecuting such acts by penal law overrides the individual's interest.

The viewpoint of consideration for the injured party is overridden also when an offense connected with the ones listed in Paragraph 209. and punishable without private complaint was also committed. In such case the offense otherwise punishable upon private complaint according to the Proposal can also be prosecuted "from office." This occurs when there is such close objective connection between the offense punishable upon private complaint and the one [punishable] without private complaint that the fact situation with respect to the latter cannot be discovered unless the fact situation of the offense punishable upon private complaint is also discovered at the same time.

Interpretive Order

To Paragraph 210.

The injured party's "condition of being unable to defend himself" is a legal fact situation element of several offenses of violent [forced] character against sexual morals. Paragraph 210. qualifies children under twelve years of age to be always unable to defend themselves. That is, the injured party of such age -- due to his smaller physical strength -- is generally unable to present greater resistance. Paragraph 210. insures uniform interpretation of the Proposal's orders.

Chapter IV.

Crimes Against the Government, Administration of Justice and Purity of Public Life

Penal law protects the state also in its functions. While the offenses defined in Chapter I. of the Proposal attack the state in its foundations, existence, the behaviors regulated in this Chapter harm or endanger the state's activity, fulfillment of the state's tasks.

The state tasks manifest themselves in various areas of the state's life. Dividing the Chapter into Titles conforms to the individual areas.

Fulfillment of the most important state functions assumes creation of popular representation organs; this is done by elections. The offense against the order of elections was placed at the head of the Chapter on the basis of the importance of this special legal object.

Title II. contains mainly border control, press control, and other offenses of similar character under the name of crimes against order.

The Proposal regulates penal law protection of state secret and service secret. In this Chapter (Title III.), the justification for this is obvious considering the subject of the offenses.

The fact situations of offenses of the office (Title IV.) protect the order and legality of national government, and the orders concerning offenses against

the administration of justice (Title VI.) [protect the order and legality of] the administration of justice. Offenses against the official person (Title V.) also belong in this Chapter, since one of the frequent methods of attack to disturb or endanger the operation of state organs is action against persons performing such tasks.

Finally Title VII. containing the fact situations of offenses against the purity of public life was placed into this Chapter. A unique legal object with respect to offenses of the office justifies bringing corruption offenses together under a separate title. And this is the purity of public life, which besides the purity of official life also includes the purity of the work of those who work in the economic and other areas.

Title I.

Crime Against the Order of Elections

In accordance with our Constitution, the voting citizens elect the members of the National Assembly and of the councils by secret vote based on general, equal, and direct right to vote.

Honoring the basic principles of election defined in law No III. of the year 1946 concerning election of national assembly representatives and council members insures that the will of the voters should prevail. In the interest of this important goal it was necessary to create the fact situation of offense against the order of elections, the legal object of which is the purity of elections.

To Paragraph 211.

In this Paragraph the Proposal declares that unauthorized exercising of the right to vote, hindering the person entitled to vote in exercising this right, violation of the election's secrecy and falsifying its result are to be punished.

Assistance extended to exercise the right to vote illegally is to be punished according to the rules of accessory before the fact (Paragraph 21.).

The Proposal prosecutes the hindering of exercising the right to vote in all of its forms. Influencing the entitled person reaches the level of punishability if it is suitable to hinder the voter in voting according to his conviction. The Proposal omits detailing the methods (violence, threat, etc.).

The Proposal speaks separately about falsifying the election's result. That is, it is possible that casting the individual votes or registering them is legal, but the election's result is determined not on the basis of these true data but by falsifying the voting result. It is not necessary to emphasize the falsification of public document as a method of commission, as in point d).

Title II.

Offenses Against Order

As it appears also from the Title's name, the offenses regulated in Title II. are offenses against order according to their special object. The penal law

protects those most important measures of the management of order [police work] the violation of which is dangerous to society to a significant extent. The border control measures stand out even from among these.

Abuse of the Right of Association

To Paragraph 212.

1. According to law No 35. of the year 1970 concerning associations, the supervisory organ refuses to register associations the purpose of which is contrary to statutory orders, and dissolves the registered association in case the conditions defined in the special statute occur.

Continued operation of unregistered or dissolved associations represent danger to society because they mean continued promotion of illegal goals or continuation of operation which harms the public interest. The person who leads or organizes such association finds himself opposing the legal order already by means of this activity.

2. Organizing refers to work performed on behalf of such association which has already begun its operation. Organizing work performed before starting to operate, the purpose of which is exactly to prepare the application for registration naturally does not fall under punishment.

By organizing and leading the actual activity must be understood, regardless of the title used.

3. Not only the functionaries of such associations commit the offense which the supervisory organ refused to register or which it dissolved after registering it. The fact situation refers also to those who did not even attempt to have their association registered because they were fully aware that their goals are illegal, there is no hope trying to legalize the association. That is, it is obvious that such an association which already at the outset forms to conduct secret activity, represents increased danger to society.

Breach of the Press Law

To Paragraph 213.

The Proposal declares those cases of violating the press law regulations to be offenses against which the national governmental (rulebreaking) or the labor law's legal disadvantages are insufficient and due to the dangerousness of which the possibility of holding responsible by penal law is necessary.

These behaviors are:

a) producing or disseminating a press product without permit, inasmuch as a permit is necessary for this.

Press products are writings, illustrations or musical works multiplied mechanically or by chemical means. Copies of writings [documents] not for public dissemination qualify as press products if the number of copies exceeds the copy number justified for the document's handling or for correspondence purposes.

It is a general rule of the press law regulations that a permit is necessary for producing and disseminating press products. But the statute may make exceptions from requiring permits. (Currently such statute is order No 26/1959. (V. 1.) Korm.).

Sale, mail distribution, delivery, free distribution, placement and introduction in a public place must be understood by dissemination. The essence of dissemination is that the disseminating person gets the press product to other persons and insures that others should learn the press product's contents.

b) Dissemination of such press product which has been ordered to be impounded or confiscated.

Impounding is a forced measure in the penal process which is in order in case the conditions defined in the regulations of penal process law (Be. Paragraph 101.) exist. Confiscation is a measure regulated by Paragraph 77. of the Proposal, section (2) of this gives orders about confiscating press products.

According to orders of the press law it is not permitted to disseminate that press product even in the possession of permit to disseminate which the detective authority impounded [attached, restricted], or the confiscation of which has been ordered by the court's legally final decision. Thus from the viewpoint of the behavior defined in the fact situation's point b) it has no significance whether dissemination of the impounded or confiscated press product has been permitted earlier.

Illegal Stay in the Country

To Paragraph 214.

These days -- as an effect of modern transportation -- criminal activity is becoming increasingly international in character. Such persons also participate in organized commission of the most dangerous offenses against the state, life, and property who are not citizens of the country of the place of commission. Therefore illegal stay of non-Hungarian citizens in our country cannot be left without penal law consequences.

According to Paragraph 61. of the Proposal that non-Hungarian citizen whose stay in the country is not desirable, must be expelled. The expelled person is required to leave the country's territory and can return only with special permission.

Paragraph 214. serves to insure the execution of expulsion. But its perpetrator can be not only that person against who the expulsion was applied as supplementary punishment but also whose permission to stay has been withdrawn through governmental steps (for example on the basis of Paragraph 7. of order No 24/1966. (IX. 25.) Korm.). Nonfulfillment of the requirement to leave the country's territory as well as the expelled person's returning to the country without permission must be understood by stay without permission. If the return without permission occurs in the manner defined in Paragraph 217. section (1) point a), prohibited border crossing must also be found in agglomeration with illegal stay within the country.

Damaging a Geodesic Marker

To Paragraph 215.

Measurement and mapping the country's territory or of a part of this area is an important public interest, its correctness depends on the conditions of geodesic markers. Damaging them, etc. can disturb work which is significant from governmental or defense viewpoints, further it can be the source of conflicts and damages for those who are entitled to use the affected area.

It is sufficient to name the geodesic marker as object of commission; it is immaterial whether the purpose of measuring the land is solution of cartographic or other governmental task, or whether the measuring of land is done by military or civil authority.

Annihilation of a Historic Monument

To Paragraph 216.

Historic monuments are such characteristic, irreplaceable relics of our country's historical past (building and other creations, their accessories, and further the fine arts and industrial arts creations connected with them), which are objective proofs of the country's economic, social, and cultural development and which are of outstanding significance from the architectural, historical, archaeological, fine arts, industrial arts, or ethnographic viewpoints. Therefore the historic monuments must receive increased protection.

The behavior which commits the offense defined in Paragraph 216. of the Proposal is annihilation of the historic monument. Ending the existence of the historic monument's substance or such high degree of damaging it must be understood by annihilation as the consequence of which the historical monument can no longer be restored to its original condition.

Only the historical monument's owner can be the offense's culprit. If a stranger annihilates or damages the historical monument, holding him responsible is made possible by Paragraph 324. of the Proposal.

Prohibited Border Crossing

Evasion of the Rules of Travel Abroad and Stay Abroad

To Paragraph 217.

1. According to the statute concerning travel abroad and passport (legal statute No 20. of the year 1973.) every Hungarian citizen has the right to travel abroad. This right can be exercised conforming to the orders of statutes; the Proposal declares those cases of abuse of this which are particularly dangerous to society to be offenses, and regulates them among the public order offenses. The most frequent among these is prohibited border crossing as well as abuse of the rules of travel abroad and stay abroad, concerning which the Proposal gives orders within the framework of one Paragraph.

2. Section (1) defines two kinds of committing behavior:

a) Point a) is the legal fact situation of prohibited border crossing, which is accomplished by crossing the country's border without permission or in an unauthorized manner. The commission's object is the Hungarian People's Republic's national border. It is immaterial whether crossing the border was done by exiting from or entering onto the Hungarian People's Republic's territory. The offense does not occur if the perpetrator crosses a border between other countries in a prohibited manner. Penal law protection of the borders of other countries is not the Hungarian penal law's task.

According to the legal statute concerning the guarding of the national border (order No 40/1974. (XI. 1.) MT, Paragraph 12. sec. (1)) it is permitted to cross the national border only with valid travel document and in possession of entrance [visa] or exit permit necessary according to the orders in effect; the crossing is done under supervision. — Therefore primarily that must be understood by crossing the national border without permission that the border is crossed without valid travel document [passport] and — when necessary — without entrance or exit permit, not under supervision. A non-Hungarian citizen can also be the culprit of the offense.

Prohibited border crossing can be committed in other ways also, for example using false or falsified passport, or one made out for a different name. Besides this numerous other methods of commission are also imaginable. The Proposal designates these by the section of the text "in a manner not permitted."

b) The passport authorizes stay abroad for a definite or indefinite length of time. The person who stays abroad beyond the time specified in it, that is illegally, abuses the passport. Point b) defines those cases of remaining abroad illegally in which holding responsible by penal law is justified. Only that Hungarian citizen can be the culprit of this who left the country in the permitted manner. The Proposal does not expressly limit the fact situation to Hungarian citizens, but this follows from the committing behavior.

Remaining abroad for longer time than is permitted is an offense if it is permanent, that is, the perpetrator desires to stay abroad not temporarily but for a longer, indefinite length of time, settles there with permanent character. It is not necessary that the perpetrator express this decision verbally or in writing; this can also be established from his behavior exhibited at his new place of stay.

Remaining abroad permanently can be accomplished by evading either the rules of traveling abroad or of staying abroad. That person abuses the rules of traveling abroad who already before traveling out decides to remain abroad permanently, but misleads the authorities concerning the purpose of his travel, for example he requests permission to travel out for the purpose of visiting or touristics.

Violation of the rules of staying abroad can be accomplished by different behaviors. In case of travel abroad for private purposes it can generally

be done by the perpetrator not returning when the authorized deadline for staying abroad expires; departing to a country different from the one to where he requested authorization to travel may be connected to this. In case of staying abroad for service purposes the committing behavior in general is that the perpetrator does not satisfy the command to return home (the established time for staying abroad in service, order to return home, instruction to return home).

It is a further fact situation element that permanently remaining abroad significantly harms the interests of the Hungarian People's Republic. By this the Proposal wants to include those acts within the sphere of penal law responsibility which represent increased danger either through the perpetrator's person or through the case's objective circumstances. This can be found for example if the perpetrator is in possession of a state secret, or exhibits hostile behavior abroad against the Hungarian People's Republic.

It follows from the dangerousness to society of the behaviors defined both in point a) and in b) that it is justified to regulate it as offense.

3. It significantly increases the dangerousness to society of the act defined in section (1) point b) if the Hungarian citizen staying abroad commits it by abusing his service or official assignment. Section (2) regulates this as a qualified case. Anyone, not only an official person can be the subject of this, who commits the offense during the course of his stay abroad for

service purpose. But that case cannot be included here if the official person remains permanently abroad during the course of his travel for private purpose.

In the case defined in section (2) the characters of the perpetrators' service, official assignment can be different; a person in more important assignment and one taking care of a less significant work area, task [both] can accomplish this. Therefore the Proposal determines the penalty item in such a way that the possibility be there for a broad spectrum of individualization.

4. Prohibited border crossing's dangerousness to society is increased if it is committed with arms or in group. Section (3) regulates these as qualifying circumstances. Points 3. and 11. of Paragraph 137. contain interpretive orders for the two concepts.

5. The dangerousness of prohibited border crossing committed by means of taking an aerial vehicle abroad is very significant and it is also more difficult to avert it. Therefore section (4) places severe punishment into prospect for this.

It is immaterial who owns the aerial vehicle, and whether the act is committed with a motor driven airplane, sailplane, or airship. The only condition is that the border crossing occur by taking abroad an aerial vehicle in [from] the Hungarian People's Republic's territory (airspace).

Inasmuch as the perpetrator gained control of the aerial vehicle for himself on its deck, by violence, threat, or by placing another into the condition of

unconsciousness or of being unable to defend himself and cross the border in this manner, the action accomplishes not the qualified case according to section (1), but gaining control of an aircraft (Paragraph 262.).

4. The dangerousness of preparation made for prohibited border crossing as well as for evading the rules of travel abroad and staying abroad is of such degree that holding responsible by penal law for these is justified.

It can be considered preparation for prohibited border crossing for example if the perpetrator left his place of residence with the purpose of crossing the border but did not yet enter into the area under the border patrol's regular supervision and control. — Preparation for the act defined in section (1) point b) can be for example obtaining the exit permit by misleading the authorities for the purpose of transferring property objects, sending their value abroad, or frustrating the possible confiscation of property. It is also a condition of punishability that inasmuch as the perpetrator completes his action — remains abroad permanently —, this significantly harm the Hungarian People's Republic's interests.

Preparation for the qualified cases included in sections (2) and (3) is not so outstandingly dangerous to make higher penalty necessary. In contrast with this the more severe penalty item is justified for preparing to commit [the offense] by taking an aircraft abroad illegally.

5. Section (6) insures differentiated evaluation of the act defined in

section (1). Such cases can occur for example when the weight of the action accomplishing the legal fact situation is smaller, and therefore a more lenient penalty item is justified. Conclusions can be made for the act's weight from its motivation, purpose, and from the case's other circumstances. Such can be for example border crossing without permit for the purpose of visiting the relation, participating in a wedding or funeral. Other circumstances of the case cannot be designated in general terms; these can also be related to the perpetrator's person and the act's objective side, for example staying abroad for a very short length of time by prohibited border crossing.

The Proposal considers the acts of lesser weight to be misdemeanors; the alternative penalty item also serves individualization.

The qualifying circumstances defined in sections (2) through (4) exclude application of section (6); in such cases the act cannot be of lesser weight.

9. Making confiscation of property and banishment possible as complementary punishment is justified for the offenses defined in sections (1) through (5). Application of confiscation of property has significance mainly if the perpetrator remains abroad and thus loss of freedom cannot be administered.

Banishment can exclude the possibility of repeating the offense, for example in the case of a perpetrator who lives near the border.

Smuggling of People

To Paragraph 217.

1. The Proposal lifts out the increasingly dangerous behaviors from the spectrum of criminal assistance [accessory before the fact] extended to prohibited border crossing, and regulates these as a separate fact situation.

Both fact situation formations of smuggling people are connected to prohibited border crossing: extending assistance, offer to do this, or undertaking for the purpose of obtaining material profit, or as a member of, or by assignment from an organization which promotes such acts. The second formation requires penal law steps against the members and agents of organizations which smuggle people. For such perpetrator it is unnecessary to examine whether he himself proceeded for the purpose of obtaining material profit, his cooperation in any case is dangerous to society to an increased degree.

'Volunteering in itself' is activity which qualifies as preparation, but it is dangerous in such degree — as known exactly from the practice of those who smuggle people, mainly of such organizations — that it must be considered as a completed formation of smuggling people.

2. Corruption as business (Paragraph 137. point 7.) significantly increases the objective weight of smuggling people, and the perpetrator's personal dangerousness [to society]. Therefore committing section (2) as a business is ordered to be punished more severely.

2. The purpose to obtain material profit is an element of the first formation of the legal fact situation of smuggling people, but this is also characteristic for the activity of organizations which smuggle people. Therefore it must be made possible to apply confiscation of property.

According to practical experience the man smugglers help the prohibited border crossing by using their knowledge of the local conditions. Therefore section (3) provides the possibility of banishment as supplementary penalty.

Failure to Make a Report [to the authorities]

To Paragraph 219.

1. Reporting offenses is the moral obligation of citizens, and -- depending on the circumstances -- their job, service obligation. Therefore generally labor law and similar legal consequences attach to failure to make a report. The Proposal threatens the failure to make a report with punishment only for those offenses in which this cannot be omitted due to the significance of the interest protected by penal law. Such are the offenses against the state (Paragraph 150.) and some offenses which are similar to this due to their character. Paragraph 219. gives orders about a group of the latter.

2. Section (1) lists the committing acts in three points.

Point a) punishes the failure to make a report even for the preparation of prohibited border crossing, and for the more serious cases of evading the rules

of travel abroad and staying abroad (Paragraph 217. secs. (2) through (4)), and for man smuggling. This is necessary in the interest of preventing the particularly dangerous, difficult to prevent actions. This is not justified in the basic case according to Paragraph 217. section (1) and in the cases of actions of lesser weight included in Paragraph 217. section (6).

If the soldier leaves for abroad in order to extricate himself by this from fulfilling his service obligation, he accomplishes the qualified case of escape according to Paragraph 343. sections (3) and (4). Important interest attaches to preventing this serious offense also, therefore it is justified to declare as offense even the failure to report the preparation. -- If a soldier fails to report the escape for abroad, he is to be punished on the basis of Paragraph 344.

Public interest also demands that the authorities should learn about the actual commission of those offenses for which even the failure to report the preparation is punishable. Therefore point c) orders that failure to report the yet undiscovered offenses specified in points a) and b) are to be punished. The offense is undiscovered if the authorities have not yet obtained knowledge of it. -- Based on points a), b), and c), failure to report not only the completed offense but also the attempt is to be punished.

It is a condition of penal law responsibility in the cases of all three committing behaviors that the person who fails to make the report should have

reliable information about the preparation, or about the yet undiscovered offense. Reliability of information is a question of fact, evaluation of which depends on the circumstances of the case. Information of that person is reliable [deserves credence] who obtains information about the act on the basis of direct personal observation; but information obtained on the basis of verbal or written communication, objective proof can also be reliable.

The obligation to make the report comes into existence as reliable information is obtained about preparation for or commission of the offense, and terminates when the person obtaining the information reports this to the authorities. Usually the belated communication does not achieve its purpose, therefore the obligated person must bring this to the knowledge of the authorities immediately after obtaining the information, as soon as he can do so. The Proposal does not restrict communication to the authorities to making the report regulated in the penal process, therefore it uses the expression of "report" which has a broader meaning.

Primarily the authorities proceeding in penal matters (detective authority, prosecutor, court) must be understood under authority, but in the given case making the report to a governmental administration organ (for example the local council) or other authority may also be adequate.

With respect to the offense's character the Proposal considers this to be a misdemeanor and orders it to be punished alternatively by loss of freedom, corrective-educational labor, as well as monetary fine punishment.

3. According to section (3), relation (Paragraph 137. point 5.) cannot be held responsible by penal law for failure to make a report. In connection with the offenses involved here, such penal law rule would be improper which turns retaliation against each other and causes conflicts of conscience in them.

Damaging the Border Sign

To Paragraph 220.

Various signs (stone, concrete, wood poles, signs, etc.) serve to designate the national border. Location of the signals has significance from the viewpoint of locating and recognizing the border line, guarding the national boundary. Unauthorized removal, changing of these signs harms the national border's order.

The behaviors which commit the legal fact situation of damaging the border signs is annihilation, damaging and moving a sign which serves to designate the national border.

Annihilation means complete eradication of the sign, damaging means disadvantageous changing of its substance. This also includes making the sign unrecognizable. Removal may mean misappropriation or taking it away from its original place without intent to appropriate it, if the signal taken away is installed somewhere else.

Taking the weight of this act into consideration, the Proposal considers damaging a border sign to be a misdemeanor, and as alternative penalty items

it specifies loss of freedom, corrective-educational labor or monetary fine punishment.

Title III.

Violation of State Secret and Service Secret

In the interest of undisturbed work of the state organs, social organizations and cooperatives it is necessary that unauthorized persons should not gain knowledge of some of the data connected with their operation. These data can be of varying significance; their basic categories requiring penal law protection are the state secret and the service secret.

Within the sphere of violation of state secret and service secret, Title III. defines the fact situations of three offenses — violation of state secret (Paragraph 221.), violation of service secret (Paragraph 222.) and failure to report violation of a state secret (Paragraph 223.) —, and further, the concepts of state secret and service secret (Paragraph 224.).

Violation of State Secret

To Paragraph 221.

1. The two basic forms of committing violation of state secret are illegally obtaining a state secret and abuse of state secret in the perpetrator's possession. This latter means unauthorized use of the state secret or making it available to an unauthorized person, or making it unavailable to an authorized person.

This latter form -- inasmuch as the state secret is not yet in the perpetrator's legal possession -- assumes obtaining it.

There may be one or more individually defined "addressees" of making it available to unauthorized person(s), but making it public (publicizing) also belongs here. And by making it unavailable, not only hiding it from an authorized person, but also annihilating the material which carries [bears] the secret or damaging it to prevent learning its content is to be understood.

2. Violation of a state secret is particularly dangerous to society if it is committed involving an especially important state secret or if it causes severe disadvantage. The situation is even more so if as a consequence of the offense the state secret becomes available to an unauthorized foreign person. In these cases section (2) establishes more severe punishment.

3. The outstanding importance of the legal object of violating a state secret requires that the law should threaten careless commission with punishment. This same thing is also the basis of declaring preparation for it to be punished (secs. (3) and (4)).

Violation of Service Secret

To Paragraph 222.

Fundamentally the elements of the offense's legal fact situation agree with those of violating a state secret, but the penalty items are more lenient. The

basis for leaving this as well as careless commission and preparation unpunished is that difference in quality which exists between the importance of the service and state secrets. Inclusion of the qualified case according to section (3) point b) is justified by the outstanding significance of military service secret and the need to protect it more closely because of this.

Failure to Report Violation of a State Secret

To Paragraph 223.

The great significance of a state secret makes it necessary that the Proposal should threaten the failure to report [violating it] with punishment.

The relation's immunity for failing to make a report is limited to the already committed violation of a state secret. In case of section (1) point a) — when commission can still be prevented — considering the state secret's importance making a report can be expected of the relation also, considering also that by this he also protects the preparation's perpetrator from that more severe penal law consequences which attach to completed violation of a state secret.

State Secret and Service Secret

To Paragraph 224.

The legal definition uses that essential characteristic of the state secret and of the service secret for its foundation that the former's coming to the

knowledge of an unauthorized person endangers an important interest of the Hungarian People's Republic, while the latter's [endangers] the operation of a state organ, social organization, or cooperative, or the order of national government, national defense, administration of justice, or economic management.

The material definition needs to be supplemented by formal definition only with respect to the state secret. Section (2) excludes the possibility of anyone reversing this character of data declared to be state secret. But the service secret is not of such outstanding importance that such strict restriction would be necessary.

Title IV.

Offenses Against the Office

It is a common characteristic of offenses of the office that their culprit can only be an official person. Those offenses which can be committed by an official person as well as by a nonofficial person, the Proposal does not place into this Title. Such are accessory after the fact (Paragraph 244.) and bribery (Paragraph 250.).

Abuse of Office

To Paragraph 225.

1. Abuse of office as the general fact situation was placed at the head of

the Title. That is, it is characteristic for all offenses of the office that their perpetrator abuses his official position etc., later Paragraphs of the Title punish the special forms of abuse.

Paragraph 137. point 1. contains the legal definition of official person.

2. Besides violating the official obligation, which is characteristic of all offenses of the office, exceeding one's authority and abuse of the official position in other ways has a character of giving examples in the text[sic]. That is, observing the rules concerning bounds of authority and restraining from abuse also belong withing the sphere of official obligation.

Assault within the official procedure, forcing confessions, and illegal imprisonment (Paragraphs 226. through 228.) — as special fact situations — exclude the finding of abuse of office, even though these all are characteristic examples of abuse of the official position. Therefore the word "otherwise" must be interpreted in such a way within the context of this Title that the rule refers by this to abuses committed in a different manner from the other official offenses.

The Proposal punishes abuse of office which involves purpose; in the absence of purpose it is sufficient if the official person is held responsible through disciplinary means.

The purpose is to cause illegal disadvantage, or to obtain illegal advantage. In case of this offense the illegal advantage derives from the abuse of

office itself. In contrast with this, the bribed official person is rewarded by another person.

Assault in Official Procedure

To Paragraph 226.

The order punishes one of the severe forms of abuse of office. Its fact situation element is that the assault should take place within the process conducted by the official person. Otherwise the act may accomplish injury to honor.

If the official person makes use of the physical activity of someone else (for example his subordinate) for the assault, that is, he does not perform the assault himself but causes it to be done, then qualification of the act depends on whether the actual assaulter can be held responsible, and for what offense. According to this he will be either instigator, or indirect culprit.

Assault is violent effect upon the human body, but does not necessarily injure the bodily integrity.

Forcing Confessions

To Paragraph 227.

Forcing confessions is an activity similar to compulsion (Paragraph 174.) and

to extortion (Paragraph 323.); the special characters of the subject and of the purpose differentiate it from these.

The perpetrator is such official person before whom the action's injured party makes a confession or declaration within the procedure. Even though this Paragraph — differently from Paragraphs 226. and 228. — does not contain the words "during the course of the procedure," there is no doubt that causing confession to be given can be talked only in such case. Usually the perpetrator's purpose is to force a confession — mainly in the penal process —, but the Proposal also punishes the act directed at forcing other declarations.

What has been said in the justification to the previous Paragraph provides guidance for that case when the official person makes use of the cooperation of another person in applying the violence or threat.

The order — besides violence and threat — also punishes the "finer" means of psychological and moral compulsion which are suitable to decisively influence the injured party's behavior. The formation of "other similar method" expresses this.

It is not a condition of the offense that the confessions or declarations thus forced differ from the two. The end does not justify ["sanctify"] the illegal means; the perpetrator's intent directed at discovering the true facts may in the given case be a mitigating circumstance, but does not exclude his guilt.

Illegal Imprisonment

To Paragraph 228.

1. That official person can commit the offense who -- according to the rules concerning his procedure and under the conditions defined there -- is authorized to deprive another of his personal freedom. His act becomes illegal if these conditions do not exist.

Illegal imprisonment is to be punished more severely -- according to section (2) -- if it is done for base motivation or purposes, if depriving freedom is coupled with tormenting the injured party, or leads to severe consequences.

Tormenting -- beyond taking away freedom -- means causing physical or intellectual suffering.

2. Section (3) defines a so-called privileged case by declaring that the perpetrators to be punished for misdemeanor if the duration of illegal imprisonment is no longer than twenty-four hours.

That is, such short time usually is not of major significance from the viewpoints of either the suffering accompanying the deprivation of freedom or of the various disadvantages resulting from the lack of freedom.

Title V.

Offenses Against the Official Person

The orders of Title V. define the area of penal law protection according to society's needs, and punish attacks against not only the official person but also persons performing public tasks and their supporters.

Violence Against the Official Person

To Paragraph 229.

1. According to section (1) the behavior which commits the offense has several variations.

Obstructing must take place within the official person's legal procedure. But the perpetrator can claim lack of legality of the procedure only if this illegality is obvious, recognizing it requires no evaluation.

Obstructing by violence must be understood to mean violence against the person. Violence against things is within the scope of the fact situation only if it transfers from the object to the person. Paragraph 138. defines the concept of threat.

Forcing to take measures must also be accomplished by violence or threat. Here we speak of such measures which the official person takes not according to his own, but to the culprit's will. From this follows that disobedience exhibited

within the course of the procedure, which manifests itself in passive behavior, does not mean forcing to take measures even if the official person forces obedience by measure; that is in such case it is not the official person who is being forced. For this same reason (lack of violence or threat) obstruction cannot be spoken of.

Assault is violence against the official person if it occurs during or because of the procedure. Such behavior harms the order of national government if the injured party is no longer an official person at the timepoint the offense is committed. Section (5) expressly declares that in this case violence against the official person, and not offense against the person (Chapter XII.) must be found.

2. The offense is more dangerous and qualifies more severely according to section (2) if it is committed in group or while armed. Paragraph 137. points 3. and 11. define these concepts. According to section (3) the group's organiser or leader is to be punished even more severely.

3. Assembling in a group aimed at committing violence against the official person is already in itself the expression of such threat which is suitable to influence the official person's procedure. The concentration of strength manifesting itself in the group also has a restraining effect on those who otherwise would be willing to support the official person, or to come to his defense. Therefore according to section (4) participation in such group is

in itself an offense also. Punishment of the group's organizer and leader is more severe.

4. For criminal policy reasons, section (6) insures freedom from punishment to the group's participant if he abandons this behavior of preparatory character.

Violence Against a Person Performing a Public Task

To Paragraph 230.

The persons listed in points a) through f) of the order are not official persons but perform tasks in the public interest — public tasks, according to the more compact legal word use —; this public interest nature of their activity is the basis for their special protection by penal law. But they do not carry increased responsibility as do the official persons.

Public transportation enterprises are those which serve the purpose of transporting persons. Employees of these as well as of the postal service performing operative or security services are entitled to protection according to Paragraph 230.

Points b) and c) also provide measures for the defense of persons performing security assignments.

Members of the lifesaving [ambulance] services and the attorney in an official

proceeding perform different character, but also such activity of public interest which demands similar protection as the one to which the official persons are entitled (points d) and e)). This same refers — in a specified area — to the doctor [physician], but it is more practical to establish the limits of this protection in lower level statutes (point f)).

Violence Against a Person Assisting the Official Person

To Paragraph 231.

Legal policy justification of Paragraph 231. is similar to that contained in the justification of the previous Paragraph. Persons who come to the assistance or defense of an official person or of one performing public tasks also act in the public interest.

Insulting the Authorities or an Official Person

To Paragraph 232.

1. Activity of the public or of the national organs, performance of the national governmental tasks can be smooth only if the person performing such function enjoys confidence and respect. Harming this confidence and respect — by behavior corresponding to slander and injury to honor — according to the Proposal is an offense not against the person (more closely against human dignity) but against the national government and the administration of justice.

2. Perpetrator of the misdemeanor defined in section (1) states (spreads etc.) a fact which is suitable to undermine confidence towards the authorities or to harm the honor of the official person. Even though the two kinds of occasions occur as alternatives, it cannot be lost from sight that harm to the official person's honor — to a greater or lesser extent — always affects confidence towards the authorities also in a disadvantageous manner.

3. Usually the statement of a true fact is not dangerous to society; discovery of errors promotes progress. But if it becomes obvious from the circumstances of the statement that the statement of the fact only serves as an excuse to undermine the confidence or to promote selfish personal interests which do not deserve consideration, establishment of penal law responsibility is justified.

This is why section (4) declares that truth of the stated fact can be proven only if the public interest or rightful personal interest justifies the statement (spreading etc.). But this latter can be the interest of not only the perpetrator but also of anyone else.

4. Perpetrator of the misdemeanor defined in section (2) does not voice facts which occurred (or did not occur) but makes insults. The insulting, berating word or act referring to the authorities takes aim not on confidence, but on respect. According to this, in its form of appearance the act is similar to injury to honor; if it is directed against the official person, then the only thing distinguishing it from injury to honor is that it is connected with the operation of the party in question.

5. According to section (3) it is a qualifying circumstance if the misdemeanor defined in sections (1) or (2) is committed before the general public.

That is, such method of commission causes increased danger to the authorities' respect. Commission by means of the press, other mass communication media, or multiplication must also be understood under committing the offense before the general public (Paragraph 137. point 10.).

6. Reasonableness and humanly understandable character of abusing the right of criticism and even of insult are such categories which do not always occur in life with unambiguous clarity. At times the official person directly affected, in an understandable manner overvalues the significance of the insult, or — what is decisive from the legal object's viewpoint — the true character and degree of danger to public interest. Therefore according to the Proposal penal process for the misdemeanor defined in this Paragraph can commence only on the basis of complaint by the organ defined in the statute. It serves to protect the rights attaching to the person that this complaint can be rejected only — if the injured party desires that the complaint be filed — if it would involve harm to the public interest.

Title VI.

Offenses Against the Administration of Justice

Uninterrupted operation of the administration of justice is the common legal object of offenses placed in this Title. But the Proposal interprets this

broadly and protects the operation not only of the court but also of other authorities which are in more or less close relationship with the administration of justice or which perform activity of similar character, including here also the organs which administer the penalty.

False Accusation

To Paragraph 233.

1. False accusation is one of the most serious offenses against the administration of justice. Its name is traditional, even though not precise, because in our country apart from the narrow circle of cases with private accusation, there is a prosecutorial monopoly of accusation. Thus the individual — in the legal sense — does not accuse [charge], but suspects, reports, insinuates [blames]. His intent — usually — is precisely to get the prosecutor to bring charges. The method for doing this [to constitute an offense. Translator] is to state before the authorities, contrary to truth, that the injured party committed an offense (section (1) point a)), or to provide the authorities with fabricated proof concerning the offense (section (1) point b)).

The accusation must take place before the authorities. Besides the authorities, Be. Paragraph 122. section (2) [penal process law] also obligates the official person to report offenses which become known to him within the sphere of his authority. Therefore [false] accusation before an official person obligated to file a complaint about it is also false accusation.

2. Accusation is statement of fact according to which a specific person committed an offense and which statement of fact appears to be suitable to cause criminal proceedings. The method of accusation can be not only communication of the statement of fact (in word or in writing, in person or through an intermediary) but it can also be committed by bringing to the authority's attention [some] proof which establishes suspicion of the offense.

From this latter viewpoint only the objective proofs or means of proof have significance. "Fabrication" of false personal proof is to be punished as invitation for false witnessing, or incitement for false witnessing.

False accusation committed according to the method in section (1) point b) is separated [distinguished] from false witnessing committed according to Paragraph 238. section (1) point c) by the fact that in case of the latter offense the accusation is not false, or the person falsely accusing is different from the person who commits the false witnessing.

Accusation can also be committed within the framework of giving testimony as a witness, for example during the course of proceedings conducted against another person or unknown culprit.

Accusation by its nature is intentional activity, without the Proposal prescribing its purpose-oriented character. Thus it is not necessary that the person making the accusation should desire commencement of the proceedings based on his statements of fact, it is sufficient if he acquiesces in this

as a possible consequence, that is his intent is intent of potentiality.

3. The penalty item of false accusation conforms to the consequences. If the false accusation was built up in such a deceptive manner that it mislead even the detective and prosecutorial authorities, that is it resulted in the commencement of penal process, this speaks for the increased dangerousness of the offense. It represents even higher degree of dangerousness if even the court cannot discover the falseness of the accusation and an innocent man is sentenced.

To Paragraph 234.

The Proposal regulates false accusation committed due to carelessness in a separate Paragraph. The main reason for this is that the order does not simply determine a careless formation of Paragraph 233. but the structure of the legal fact situation is unique. More lenient evaluation of the false accusation is justified if the perpetrator does not know about the incorrectness of the fact situation or about the falseness of the proof (factual error).

To Paragraph 235.

1. Noticing a rulebreaking or disciplinary misdemeanor within the official authority does not involve the obligation to report according to Be. Paragraph 122. section (2). Therefore the Proposal establishes the circle of authorities (official persons) before whom the offense can be committed, more narrowly if

the false accusation's object is rulebreaking or disciplinary misdemeanor. Besides the authorities of crimefighting and administration of justice, only the rulebreaking [rule violation] authorities and those practicing disciplinary authority belong in the circle mentioned above. Any organ authorized to proceed in rulebreakings is to be understood under rulebreaking authority. Practitioner of the disciplinary authority can be only the person possessing disciplinary authority over the accused.

2. The committing activity corresponds to that of Paragraph 233. section (1), but the penalty item is more lenient, considering the act's smaller dangerousness to society.

To Paragraph 236.

1. According to the Proposal if proceedings (basic case) commence due to the false accusation, before this is completed, process can be initiated against the false accuser only on the basis of complaint made by the authority in the basic case.

That is, the possibility must be prevented that those who actually committed the offense should turn against the person making the complaint by accusing him of having made a false complaint, intimidate him and motivate him to withdraw his report. In addition, in the case of false accusation it is usually not possible to make a decision before judging the basic case, because the accusation's incorrectness depends on the result of the basic case.

The order concerning lapse [statute of limitations] serves to exclude the possibility of ending the false accusation's punishability — due to lapse of time — before the proceedings in the basic case come to an end. Naturally the rule is without object [moot] if penal, disciplinary or rulebreaking proceedings were not initiated against the falsely accused person, that is, there is no basic case.

2. In section (2) the Proposal provides the opportunity for mitigating the penalty without limits, even — in case circumstances exist which deserve special consideration — omit punishment of the false accusation's perpetrator if he disclosed before the proceeding authorities the falseness of his accusation before the basic case is completed. Discovery of material truth, and particularly avoiding the sentencing of an innocent person are such important social and legal policy interests that in terms of significance they override even the interest attaching to punishing the person making the false accusation. Disclosing the accusation's falseness does not necessarily mean disclosing the truth, which the false accuser perhaps does not even know. Thus it would be unfair to demand disclosure of the truth from him.

Misleading the Authorities

To Paragraph 237.

Making an untrue report which serves as foundation for a penal process deserves punishment even besides the case of a false accusation. It takes away the

authorities, particularly the detective authority from the tasks of discovering and preventing actual offenses, and by this it indirectly helps the activity of criminals.

The justification attached to Paragraph 233. must be taken into consideration when interpreting the fact situation elements.

False Witnessing

To Paragraph 238.

1. The Proposal maintains false witnessing as the traditional name, even though contentually the fact situation -- besides false witnessing -- also refers to expressing false professional opinion, providing false professional advisory information, false translation, and false interpretation.

According to section (1) false witnessing can be committed by making untrue confessions or by concealing true facts. The perpetrator's intent must encompass these fact situation elements.

False witnessing can be committed before the authorities. Among the authorities the Proposal's text emphasizes the courts, since this offense most of the time is committed in suit or nonsuit proceedings before the court. Even though the Proposal separately regulates false witnessing committed in penal, civil, as well as disciplinary, rulebreaking, labor matter or cooperative executive committee, elected court or other authorities' proceedings, first it provides a general definition before section (1).

False witnessing must involve the case's significant circumstances. Not only that circumstance is significant which affects decision of the case on the merits, but also that which is significant from the viewpoint of other decision made in the proceedings (for example in penal case the circumstances which provide the foundation for preliminary arrest).

2. Section (2) specifies application of the orders concerning false witnessing also for rendering false professional opinion, providing false professional advisory information, as well as false interpreting and false translation. The things explained in point 1. provide guidance for interpreting the fact situation elements as applicable.

Furnishing false documents or false means of objective proof must be judged similarly, either in penal or in civil matters. That case when this action accomplishes the false accusation defined in Paragraph 233. section (1) point b), and that case when the accused party of this penal proceeding furnishes the false proof, do not belong here. Section (3) expressly excludes this possibility.

3. Section (4) gives orders about punishing false witnessing committed in a penal case. More severe punishment is justified if the false witnessing is committed with respect to an offense which is punishable also by the death penalty.

4. Similarly, punishment of false witnessing committed in a civil matter

is determined in a differentiated manner by section (5). The qualifying circumstance is particularly large property value of the case's object, or particularly significant other (nonproperty) interest. Particularly significant other interest may occur for example in suits concerning personal status, where the judgement affects everyone, or — due to exclusion of reopening the case — the harm caused by the wrong decision cannot be rectified.

5. Section (6) punishes false witnessing committed out of carelessness in a penal or civil matter, including also the cases of section (2).

To Paragraph 239.

False witnessing committed during the course of disciplinary proceedings, rulebreaking proceedings, labor matter or cooperative executive committee proceedings, elected court or other authorities' proceedings involves the danger of smaller legal harm than that in the previous paragraph. This is the basis for more lenient consideration by penal law, false testimony given carelessly in such proceedings does not need to be pursued by means of the penal law.

To Paragraph 240.

This paragraph gives the same orders with respect to false witnessing as does Paragraph 236. in the area of false accusation; the things explained in the latter paragraph's justification are also valid for the within paragraph.

To Paragraph 241.

1. The Paragraph creates a reason to exclude punishability for the case when the witness is questioned contrary to the orders of Be. Paragraph 65. In such case the witness's testimony cannot be taken into consideration as an instrument of proof (Be. Paragraph 67. sec. (3)). Reasonably, this same is also valid for the expert, the special advisor and to the interpreter (Be. Paragraph 71. sec. (3), Paragraph 79. sec. (2), Paragraph 80. sec. (3)).

2. The basis for section (2) is the same legal policy consideration which prevails in Paragraph 236. section (2). Revealing a concealed significant circumstance belatedly has the same significance as withdrawal of the false testimony of a witness.

Invitation for False Witnessing

To Paragraph 242.

Conceptually the invitation for false witnessing is behavior of preparatory character (unsuccessful instigation). But the degree of its dangerousness to society is such that it is necessary to punish it as a so-called sui generis offense.

Conforming to Paragraphs 238. and 239., this Paragraph establishes differentiated penalty

Concealment of Saving Circumstance

To Paragraph 243.

Due to unfavorable meeting of circumstances, someone even innocently can become charged or even convicted in a penal proceeding even without false accusation or [false] witnessing. In the interest of preventing, or repairing such injury the Proposal punishes the concealment of saving circumstances.

The saving circumstance must be communicated to the person under penal proceeding, his attorney or the authorities. The person under the penal proceeding can be a suspect, accused or convicted.

The obligation that the saving circumstance as a significant circumstance of the case must be brought to the knowledge of the authorities, contentually does not differ from the obligation to serve as witness, therefore persons who cannot be punished for false witnessing cannot be held responsible on the basis of this paragraph either (justification attached to Paragraph 241.).

Accessory After the Fact

To Paragraph 244.

1. Being accessory after the fact -- as one of the variations of being connected with the offense -- that fact differentiates from being accessory before the fact (Paragraph 21. sec. (2)) that the accessory after the fact provides assistance to the perpetrator of the offense only afterwards, without previous agreement.

Among the committing behaviors listed in section (1) points a) and b) the one according to point b) is the more general. The person who provides assistance to the perpetrator to escape from the pursuit of the authorities also endeavors to frustrate the success of the penal process. Keeping point a) separate is justified because it is correct to limit the immunity assured for the relation to the case of point a), and it cannot be granted to the person who not only extends assistance to the perpetrator's escape but also otherwise endeavors to frustrate the success of the penal process.

The major difference between being an objective accessory after the fact according to section (1) point c) and receiving stolen goods (Paragraph 326.) is that the accessory after the fact serves the interest of the basic act's perpetrator, but the receiver of stolen goods attempts to obtain material profit for himself or for another.

2. The person who commits being accessory after the fact for the purpose of obtaining profit deserves more severe punishment. Section (2) gives orders about this. In connection with the offenses listed in Paragraph 326. section (1), being accessory after the fact according to section (2) cannot be committed. Receiving stolen goods is such behavior.

3. The Proposal punishes being accessory after the fact more severely if it is committed in connection with a severe offense, or if an official person commits it within the course of his proceedings. Section (3) gives orders about this.

4. The person who commits the offense of being accessory after the fact in the interest of the escape of his relation, that is, for appreciable motive, cannot be punished according to section (4). But that person who commits the offense of being accessory after the fact for the purpose of obtaining profit, as well as the official person who commits it within the course of his proceeding, are not worthy of excuse.

Prisoner Escape

To Paragraph 245.

1. During the course of the penal proceeding the authorities may apply forced measures which deprive the citizens of their personal freedom. Loss of freedom when administered and restrictive custody on the basis of legally final sentence also involve the loss of personal freedom.

It is an important interest of the administration of justice and of society that the person against whom the application of such measure or penalty was ordered (the prisoner) should not be able to extricate himself from administering it. The order of Paragraph 245. serves this interest. That person commits the offense who escapes from the custody of the authorities. Custody is a comprehensive expression, but only the measures mentioned above and loss of freedom connected with giving effect to punishment are to be understood by it.

2. There are other institutions of penal law and governmental administrative

character which involve depriving of personal freedom or result in significant extent of limiting it (forced medical treatment, forced work therapy treatment of alcoholics in an institution, rearing in a correctional institution, etc.). The person who extricates himself from the execution of these does not commit prisoner escape.

Prisoner Uprising

To Paragraph 246.

1. Paragraph 246. punishes the most serious attack against the order of administering punishment.

Prisoner can commit the offense; under "prisoner" the things defined in Paragraph 245. must be understood.

Joint act of at least three prisoners is necessary for the fact situation to materialize; behavior of similar character by one or two prisoners can be some other offense (for example violence against official person).

The behavior which accomplishes the offense is open resistance seriously endangering the order of administering punishment. In absence of serious danger some other offense, or disciplinary misdemeanor can be established.

"Resistance" is any form of opposition, active or passive.

The resistance is "open" if it is expressed, definite and recognisable, but it does not have to be [in] public.

2. Just as all group offenses, the prisoner uprising is also more dangerous if the open opposition is not spontaneous but organized. Therefore the organizer and leader, as well as the member of the uprising who commits violence against a protector of order -- according to section (2) -- answers as perpetrator of a qualified case. The prisoner uprising is to be punished even more severely if it leads to particularly severe consequences. It can be a particularly severe consequence for example if many people are injured as a consequence of the prisoner uprising, or if very large damage is caused.

3. Legal policy justification of section (4) which encourages voluntary abandonment [of the uprising; desisting] -- by promising unlimited mitigation of the penalty -- is obvious; that does not need explanation either that such leniency is not in order for the perpetrators of the more severe, qualified cases.

Section (5) punishes the preparation for prisoner uprising. This is justified by the offense's large dangerousness to society.

Attorney's Malfeasance

To Paragraph 247.

The lawyer has disciplinary and material responsibility for any kind of violation of responsibility deriving from his profession. That violation of obligation is most severe -- and requires holding responsible by penal law -- the purpose of which is that the lawyer should cause illegal disadvantage to his client. Paragraph 247. gives orders about punishing this.

Illegal disadvantage can be not only disadvantage involving property, but also other harm to interests.

Commission motivated by material interest renders this offense punishable more severely, regardless of whether the perpetrator wants to obtain profit for himself or for another.

Qualification as attorney trainee, as well as such occupation to the practicing of which the authorization attaches to perform legal representation mean situations similar to that of the attorney, thus it is justified that similar penal law responsibility should be coupled with this situation.

Unauthorized Writership

To Paragraph 248.

The order punishes unauthorized drafting of petitions or documents done as a business.

The concept of doing something as a business is defined by Paragraph 137. point 7.

Unauthorized writership disturbs the work of the authorities, hurts the interests of the lawyer profession, may cause damage to citizens unfamiliar with the law. But the dangerousness to society caused by that person's activity who drafts petitions or documents not as a business, though for consideration, does not reach the level which requires prosecution by penal law.

Seal [Lock] Violation

To Paragraph 249.

Taking something under seal and impounding are important measures by the authorities based on legal statute, respect for which must also be insured through the means of penal law.

Paragraph 249. defines two formations of seal violation. Section (1) gives orders about seal violation taken in the stricter sense. The behaviors which commit it violate [harm] the action of the authorities which also externally express placement under seal.

Extricating the impounded object from execution is to be punished more severely according to section (2). This is usually but not necessarily committed by the object's owner.

Title VII.

Offenses Against the Purity of Public Life

The orders of Title VII. protect primarily the confidence placed into the legal, impartial, and unbiased operation of state organs, persons fulfilling official and other important social functions. The so-called corrupt offenses (bribery and influence peddling) endanger this confidence, and the purity of public life in general, those increased moral and social consequences which under the circumstances of a socialist society are valid not only in the

operation of the authorities and official persons but also in the economic and cultural life.

Paragraphs 250. through 252. regulate the cases of so-called passive bribery, Paragraphs 253. and 254. the cases of active bribery. Paragraph 255. defines a special variety of bribery connected with the press. By doing this it protects the press which fulfills an extremely important role in the public life, against all improper influence.

Suppression of criticism also harms the purity of public life. Therefore the Proposal punishes the persecution of a person who makes a report in the public interest (Paragraph 257.).

Bribery

To Paragraph 250.

1. Paragraph 250. punishes the most severe variety of bribery. The offense's subject is an official person (Paragraph 137. point 1.). In the interest of protecting the purity of public life, section (1) draws the circle of penal law responsibility broadly. It does not expressly refer to it that requesting the benefit, accepting its promise, or agreement with the requestor or acceptor of the benefit (hereinafter: requesting the benefit) may influence the official person to the harm of public interest, because this follows from the other fact situation elements.

The "benefit" can be not only property, but also of other character.

The bribery may be initiated by the official person (requesting the benefit), but he may also commit the offense by accepting the benefit or its promise (future benefit) offered by the active briber.

It is also bribery if the benefit's requestor or acceptor is a third person (for example relation to the official person), but the official person -- expressly or tacitly -- agrees that the third person should request or receive some benefit with respect to him.

Requesting the benefit must be in connection with the official person's operation. How close this connection is has significance in the area of meting out the punishment. It is the closest if the official person requests the benefit in a case in progress, before fulfillment of his specific official obligation would take place. But it is also bribery if he requests the benefit only after the case is completed.

The official person can also request a benefit independently of any specific case. The sense of such bribery is to win the official person's "good will" in the hope of some future reciprocation.

The offense is complete with the requesting of benefit, etc. From this viewpoint it is immaterial whether or not the official person does anything in exchange for the benefit.

2. Bribery's dangerousness to society is increased if it is committed by an official person in leadership position or by one authorized to take measures in more important cases, or by another official person in a more important case. In these cases section (2) determines more severe punishment.

3. Section (3) regulates the most severely qualifying cases of bribery. The offense is complete if the perpetrator violates his official obligation, exceeds his authority, or otherwise abuses his official position for the benefit.

To Paragraph 251.

1. This offense differs from bribery defined in Paragraph 250. by the fact that its perpetrator is not an official person but a worker or member of a state organ, cooperative, or association — who does not possess the qualifications mentioned above. Among state organs (Paragraph 137. point 2.) primarily the state's economic operating organs and institutions can come into consideration here, among the formers primarily the state enterprises.

Public opinion does not measure the perpetrators of "economic" bribery with the measure which applies to official person. The statute also cannot leave this out of consideration. Therefore, at the current level of social consciousness, Paragraph 251. section (1) punishes only that economic bribery which is connected to violation of obligation. But it is not necessary that the expected or promised violation of obligation be actually committed. The justification attached to Paragraph 250. respectively provides guidance for the interpretation of the other fact situation elements.

2. If the perpetrator of bribery (the bribed person) does actually violate his obligation, his act — according to section (2) — qualifies more severely.

To Paragraph 252.

1. Paragraph 252. defines the more serious variation of economic bribery. Increased requirements similar to those of official persons must be made on those workers or members of the organs listed in Paragraph 251. who are authorized to take measures independently. Therefore the fact situation corresponds to that of Paragraph 250. section (1), and the justification attached to this Paragraph must be taken into consideration here also.

The circumstance of whether the perpetrator is authorized to take measures independently is not to be judged according to the name of his work area or assignment. The decisive thing is, to what rights is he actually entitled.

2. This punishable behavior also qualifies more severely if the perpetrator violates his obligation for the benefit. Thus those written in the justification attached to Paragraph 251. section (2) provide guidance here also.

To Paragraph 253.

1. Paragraph 253. punishes bribing an official person (active bribery), and corresponds to the passive bribery according to Paragraph 250. The justification attached to the latter Paragraph must also be taken into consideration in interpreting its fact situation elements.

Section (1) punishes the giving etc. of such benefit which is suitable to influence the official person in his operation to the harm of public interest — excepting the case of section (2).

2. The offense qualifies more severely according to section (2) if the briber gives or promises the benefit to get the official person to violate etc. his official obligation (purpose-oriented behavior).

The active briber is to be punished according to this order and not as the instigator of bribery defined in Paragraph 250. section (3) if the official person violates his official obligation for the benefit. That is, only the official person has the increased responsibility.

3. It happens that the benefit is requested by the corrupt official person (Paragraph 250. sec. (1)), and the client may fear illegal disadvantage in case of his reluctance. The order of section (3) which creates a reason to exclude punishability gives consideration to this forcing situation.

If the briber gives or promises the benefit for violation of obligation (section (2)), he does not deserve immunity from punishment.

To Paragraph 254.

Paragraph 254. punishes the active variation of economic bribery (Paragraph 251.). Concerning the interpretation of the fact situation elements the justification attached to Paragraph 253. must also be taken into consideration. The briber

must be held responsible according to Paragraph 254. also if he gives or promises benefit to a worker designated in Paragraph 252. section (1), authorized to take measures independently, in order to get him to violate his obligation.

The active briber is to be punished always according to Paragraph 254. and not as participant of the offense defined in Paragraphs 251. and 252. if the latter offenses were committed for some benefit.

To Paragraph 255.

The offense can be committed by such person who has the opportunity to influence the content of information communicated by press products or other mass communication media (radio, television). Paragraph 213. punishes violation of the press law regulation, thus the justification attached to this Paragraph respectively provides guidance here also.

The requested or accepted benefit must be illegal. Legally requested fee for example for publishing the advertisement is not such benefit.

Requesting or giving the benefit can have two kinds of purposes: to publish something, or to conceal something.

With respect to the more serious offenses -- for example extortion defined in Paragraph 323. -- the order is of supplementary character.

Influence Peddling

To Paragraph 256.

1. Influence peddling is an offense closely connected to bribery. The person committing it is sort of wedged between the possible subjects of passive and active bribery, but has an independent role.

Section (1) is influence peddling corresponding to bribery according to Paragraph 250. The person committing it requests or accepts the benefit by claiming that he will influence an official person. But it is immaterial whether he really can or wants to do so. If not, his behavior is of the type of deception, but it primarily also harms the purity of public life.

2. Section (2) defines the qualified cases of influence peddling.

It harms the purity of public life, confidence placed into the impartiality of official persons more severely if the perpetrator claims or creates the appearance that he will bribe an official person or if he passes himself off as an official person.

That person also deserves more severe punishment who commits the offense as a business (Paragraph 137. point 7.).

3. Section (3) defines a milder variety of influence peddling connected to [corresponding to] Paragraph 251.

4. The "client" of the influence peddler can be held responsible for bribery according to Paragraphs 253. and 254. also if he came in contact only with the influence peddler.

Persecution of a Person Making a Report in the Public Interest

To Paragraph 257.

According to law No I. of the year 1977 concerning reports, proposals, and complaints made in the public interest, the person making the report is entitled to protection. The Proposal insures this also by the means of penal law.

The concept of a report made in the public interest is defined by Paragraph 4. of the above mentioned law. That person commits the offense according to Paragraph 257. who takes disadvantaging measures against the person making the report because of such report, that is -- possibly while maintaining the appearance of legality -- "avenges" the report.

In contrast with this, legal measure taken on the basis of the report does not accomplish the offense defined in Paragraph 257. if it is disadvantageous in some respect for the person also who made the report.

Confiscation

To Paragraph 258.

According to Paragraph 77. section (3) that object [thing] which was the

object of the given property benefit [advantage] must be confiscated in the cases defined by law. Such order is absolutely necessary in the area of offenses against the purity of public life to take away the property benefit obtained illegally, from the perpetrator. Paragraph 258. section (1) deals with this.

If the confiscation cannot be ordered or carried out, the perpetrator must be required to pay the object's value (Paragraph 77. sec. (4)).

Paragraph 258. section (5) makes confiscation of such property benefit possible and at the same time mandatory the object of which was not some [tangible] thing. Such can be for example some kind of service of material value.

Chapter XVI.

Offenses Against the Public Order

1. Public order means the Hungarian People's Republic's legal order defined in its Constitution and other legal statutes, as well as the order of national and social conditions corresponding to the standards of living together in a socialist society. That is, it means a situation in which the organs of national authority and national government as well as the social organization can operate in accordance with their purposes, without disruption; the rights and obligation of citizens can prevail without hindrance. In this sense all offenses also harm the public order.

But the offenses defined in the Proposal's other Chapters attack primarily some characteristic legal object (for example person, property, etc.) and this determines their placement in the Special Part's system.

2. In Chapter XVI. the Proposal defines the fact situations of such offenses which in general harm or endanger the rights or interests not of a specified person, but their harmful effect affects a broader area than this, a greater or narrower group of the citizens. The direction of this harmful effect determines the Chapter's internal subdivision. The four Titles developed as a result of this: with the fact situations of offenses against public safety, public tranquility, public confidence, and public health.

Title I.

Offenses Against Public Safety

In general we mean by public safety that keeping under control and preventing the severe antisocial behaviors is successful. A major portion of these are offenses regulated in other Chapters of the Special Part; their prevention -- as for example the safety of life and property -- is also part of public safety. Among the fact situations included in the within Chapter, the battle against the following offenses belongs under preservation of public safety:

Causing public danger, interference in the operation of a plant of public interest, terrorist activity, gaining control of an aircraft, abuse of explosive materials etc., as well as abuse of radioactive material and poison.

The dangerousness of these acts to public safety is easy to comprehend.

Publicly dangerous indolence and organizing prohibited games of chance are behavioral forms of parasitic elements of the indolent, because through their persons this represents danger to public safety.

Causing Public Danger

To Paragraph 259.

1. This Paragraph regulates an offense of endangerment. The activity committing it is causing of public danger or preventing that existing public danger be defending against, or its consequences lightened.

The Proposal does not define the concept of public danger but leaves working it out to the judicial practice. Rapid growth of technology always brings new sources and forms of public danger into existence; practice rigidified by a legal definition could not keep step with progress. Even so it can be determined that the danger becomes public danger if it threatens not only one or more — but in any case a small number -- of specific persons, but one or more undefined persons or a larger number of defined persons. Public danger is spoken of also if things of significant value are endangered.

2. Among the methods of commission listed in section (1) the first two (setting fires and causing floods) are of the nature of examples, just as selecting the explosive and radiating materials or energy from among the list

of energies. By mentioning the triggering of destructive effects of material or energy, the fact situation encompasses all possibilities of commission.

Mentioning material and energy together in the text serves to increase understandability and exclude misunderstandings. In case of flood the tremendous inertial energy of the mass of water falling onto the flooded area and the material characteristics of water both may represent the source of danger. If someone causes some material which was piled up or became piled up (cord wood, scaffolding, wall, dirt, etc.) to collapse, this can be expressed in such a way that the danger was concealed in the characters of the material (weight, hardness, etc.), but it can also be expressed in such a way that the perpetrator triggered [released] the destructive energy's effect concealed in the collapsible material's position [potential energy].

This offense materializes by damaging the gas equipment also, if this causes the possibility of gas explosion.

3. Setting fire is completed if the ignited material catches fire, that is it continues to burn independently of the igniting material; until this takes place, we can speak only of an attempt.

When flood is caused, the offense is complete when the water is turned loose, the protected area becomes flooded. Thus for example if even though the culprit cuts through the dam, but parts of the dam collapsing from the two sides close off the opening and the water does not flood the area this side of the dam, attempt occurs.

4. The Proposal regulates commission in criminal association as qualified case of public endangerment. It attributes equal weight on the objective side with this qualified case in the subjective respect if the public endangerment causes particularly large damage.

According to section (3) a qualified case to be punished more severely than the above, occurs if the offense causes the death(s) of one or more people. This case creates legal unity with careless killing of a human.

5. The high degree of danger caused to society by public endangerment justifies that careless commission and preparation are declared punishable.

Finally the greatly important legal policy interest of avoiding the harmful consequences dictated the possibility of unlimited mitigation to be offered to such perpetrator by section (6) who voluntarily terminates the public danger before the harmful consequences would occur.

Interference in the Operation of a Plant of Public Interest

To Paragraph 260.

1. This Paragraph of the Proposal declares disturbing the operation of plants significant from the viewpoints of the national economy and of the population's needs to be an offense.

Section (4) contains the legal concept of a plant of public interest. According to this the public works, mass transportation operation in general traffic,

communication operations, and finally certain plants producing highly important goods belong here.

Those production units are considered public works which insure water, steam, electricity, gas and heat energy supply to industry, agriculture, or the population, or serve the population's general comfort as well as health.

Operation of such transportation equipment belongs in the concept of mass transportation in general traffic which can be used by a broad circle of users (general traffic character) and which are suitable to conduct mass transportation. According to this for example the rental car (taxi) does not belong here, because even though it is in the general traffic, but it is not done with mass transport equipment.

Besides the operations of the telephone, teletype, radio, television, telex, etc. the undersea cable also belongs within the sphere of telecommunication (protection of this [undersea cable] is prescribed by international agreement).

The raw material mentioned in section (4) is an economic concept: in the narrower sense it means a certain group of raw materials which are of basic significance from the viewpoint of national economy as a whole (as for example coal, iron, oil); and in the broader sense it means the main element of construction of the individual products (for example iron for machinery, wool or cotton for textile products). From which the products are produced, which is the basis of the product.

2. Interference with the operation of a plant of public interest is a result offense; thus significant extent of disturbance in the operation must take place.

The Proposal orders that all disturbance of operation be punished and mentions the damaging of equipment and lines only as a matter of example. Operation includes the entire process of production or providing service. For example the various subcenters (centrals), transformers can be the objects of commission just as much as equipment installed for the purposes of producing and transporting coal or other mineral of raw material character.

3. According to section (2) it is a more severely qualifying circumstance if the offense is committed in criminal association or by causing particularly great harm to property. The justifications of this can be found in point 4. of the justification attached to Paragraph 259.

Reference must be made to the justification of Paragraph 259. with respect to penalizing the careless commission also.

If injury or death occurs due to the offense, which can be attributed to the perpetrator, agglomeration occurs. We are facing agglomeration also if the act also accomplishes the fact situation of endangerment committed within the sphere of a job.

But agglomeration does not occur in the case of damaging, because the fact situation includes this.

Terrorist Activity

To Paragraph 261.

1. In recent years professional and organized criminal activity has created more dreadful, qualitatively new forms of compulsion and extortion than has been known before. Their common characteristic is that the perpetrator (person or group) endeavors to exclude the possibility of failure by obtaining security. It acquires control over one or more persons -- possibly goods of high value --, and makes release of the person or return of the goods dependent on fulfillment of their demands.

If the demand's target is not a state organ or social organization, the act -- depending on the demand's content -- is extortion or compulsion, to which other offenses may join in agglomeration according to what other fact situations the perpetrator accomplishes during the course of acquiring control over the "security" and keeping it under his control. But if he addresses the demand to a state or social organ, the new type of offense defined in the within Paragraph: terrorist activity occurs.

2. It must be established on the basis of the demand's content, to whom it was addressed.

It is possible that the formal addressee of the message containing the demand is not a state organ or social organization, but for example a private person.

The perpetrator intends an intermediary role for such addressee; he assumes about him with sufficient basis that — in the interest of the hostage — he will forward the demand to the form which is capable of fulfilling it.

The situation is similar in the case of such material demand which the addressee or the hostage's relation cannot fulfill either because the goods demanded are in the possession of the state organ or social organization, or because his wealth situation automatically excludes it. That is also undoubtedly such demand which is aimed at setting prisoners or convicts free, authorizing prohibited activity or terminating penal proceedings.

3. According to international crimefighting experience the perpetrators of such act are persons determined to do anything, who do not shrink back even from causing the most severe harm, thus from maiming or killing the hostages. According to section (2) the qualified case of terrorist activity is accomplished by such activity, such composite offense which is punished by the Proposal's most severe penalty item. This qualified case can be found also if the perpetrator is guilty at least of carelessness with respect to the result (Paragraph 15.).

Commission in time of war also increases the dangerousness of terrorist activity in a degree similar to the one just mentioned; in such qualified case the penalty is also the most severe one.

4. The terrorist acts' high degree of dangerousness to society makes it

necessary to fight preparation for them as offense according to section (3). That is, the experience of criminology [criminalistics: sic] is that the terrorists usually carry out their attack on the basis of a carefully assembled plan worked out in details. Declaring the preparation to be an offense serves to prevent this offense.

Requiring the reporting obligation in section (4) also promotes prevention.

The magnitude of values and interests risked by the act dictates the unlimited mitigation possibility insured in section (5) for that case if the perpetrator abandons the continuation of offense at such time when this has not yet involved a severe consequence.

Gaining Control of an Aircraft

To Paragraph 262.

1. It is not incidental that the Proposal places the offense discussed here next to the fact situation of terrorist activity; not infrequently the former is an action of means for the latter. But gaining control over an aircraft is a dangerous offense even without such connection, by itself also.

The fact situation's basis is the obligation for penal law persecution of such acts accepted in the agreement signed in the Hague on the 16th day of December 1970 and published by legal statute No 8. of the year 1972 about overcoming the illegal gaining of control over aircraft.

The offense's object is the safety of air traffic. The orders of Chapter XIII. also protect this legal object, but from another side.

The offense defined in Paragraph 184. can also occur by applying violence or threat, but while this offense is completed with the application of violence (threat), Paragraph 262. defines a result offense, the fact situation of which becomes complete with the acquisition of control over the vehicle as the result, without this it remains in the attempt stage. This unique result which represents injury to the order and safety of traffic, refers Paragraph 262. to be among the offenses against public order — more specifically, public safety.

2. Though usually the purpose of illegally gaining control over an aircraft is to change its route, the Proposal still does not regulate it as a goal-oriented offense. The reason for this simply is that gaining control over the aircraft illegally, carried out in the manner defined in the fact situation can be imagined for other purposes also.

The fact situation extends over all other aerial traffic equipment also besides the airplane (for example helicopter, airship). It is immaterial for what purpose the equipment involved was intended (for civilian passenger traffic or for military, agricultural, health care, etc. purposes).

The place of commission is the aircraft's deck. Though violent, etc. takeover of control over the aircraft is possible in other places also — for example in

the airport's control tower —, the dangerousness of such method remains below the typical variation according to the fact situation, and the other fact situations are sufficient to fight it.

3. It is a significant difference between the objects of commission of Paragraph 184. and Paragraph 262. that the aircraft in the latter does not have to be a vehicle "in traffic," that is, the offense can be committed not only in flight.

It is without a doubt that commission in flight also includes the danger of the aircraft's crash, which danger does not exist in case of an aircraft on the ground. Yet criminology experience shows that as a result of acquisition of control [hijacking] committed prior to takeoff or after landing the aircraft's personnel and the passengers are usually in just as dangerous a situation as if it were committed in the air. Therefore the Proposal omits reference to commission while in flight.

In the interest of making the legal protection complete, in this Paragraph the Proposal also lists rendering unconscious or into a condition of unable to defend himself among the activities which commit the offense, besides violence and threat (to which Paragraph 184. refers as examples).

4. Gaining control over an aircraft is often an act of means for the terrorist activity defined in Paragraph 261. That statement which appears in point 3. of the justification to the previous Paragraph, that they can be deterred

from destroying human life only by the most severe one of the Proposal's penalty items, is valid for air pilots also. Therefore according to section (2) the qualified case threatened by the most severe penalty occurs if the offense causes the death of one or more people.

5. Declaring the preparation for gaining control over an aircraft to be an offense is a necessary consequence of the extremely high degree of the basic act's dangerousness to society. In this respect reference must be made to what has been explained in point 4. of the previous Paragraph's justification.

Abuse of Explosive Materials, Blasting Materials, Firearms or Ammunition

To Paragraph 263.

1. Explosive materials and blasting materials are dangerous objects. Their purchase, storage, handling, preparation, sale, use are tied to the observation of various strict regulations defined in the statutes. Violation of these rules endangers public safety. This justifies prosecution by penal law.

The concept of explosive material does not require explanation. By blasting materials we mean that equipment which serves to explode the explosive material (for example dynamite), such are for example the blasting cap and the fuse. Thus the contrivances used for explosions (bomb, infernal machine, hand grenade, etc.) are unifications of explosive materials and blasting equipment.

2. The things said above about explosive materials and blasting equipment are

for the most part or entirely valid for firearms and ammunition also, thus abusive possession etc. of these represents no lesser danger to public safety than of the ones first mentioned. Order No 2/1975. (IV. 16.) BM [Ministry of Interior] contains the rules concerning the manufacture, sale, possession of firearms and ammunition.

But it is a difference which deserves mentioning that private persons may also keep in their possession firearms — for example for the purposes of hunting or self defense — on the basis of appropriate permits.

Abuse of Radioactive Materials

To Paragraph 264.

Production, use, transportation of radiating (radioactive) materials and products is regulated by order No 10/1964. (V. 7.) Korm. and by order No 1/1964. (V. 7.) Bu M [Ministry of Health].

As a result of research in radiation physics the use of radioactive materials has been spreading increasingly in the various production processes, in medicine and in scientific work. A significant portion of the many types of radioactive isotopes and other radioactive materials is dangerous; their handling contrary to regulations can be the source of harm to health. The harm — depending on the quality and strength of radiation — may also be dangerous to life.

Considering these dangers, strict safety regulations must prevail in the area of handling such materials. Violation of these safety rules by those who legally handle the radioactive materials is rulebreaking, except when it causes public danger ordered to be punished by the Proposal's Paragraph 259. or if it qualifies as endangerment defined in the Proposal's Paragraph 171.

Preparation, obtaining, possession, sale, or transfer to a person not authorized to possess it, of radioactive materials or preparations dangerous to health, without authorization is much more dangerous behavior than violation of administrative safety rules, thus the Proposal declares this to be offense.

Order No 1/1964. (V. 7.) Eu M provides guidance for the concept of dangerousness to health. This order in its Paragraph 1. defines the spectrum of radioactive materials covered by its effect. Among those, the ones listed in this Paragraph's point a) are those the activity of which exceeds 2 microcuries, or the extent of harmless radioactivity designated in supplement No 1. of the order. These are what the Proposal means by "radioactive materials dangerous to health." (As a result of sharp progress in radiation physics, the spectrum of these will probably modify with time.)

Abuse of Poison

To Paragraph 265.

From the penal law's viewpoint the Proposal does not differentiate between

poisons listed in the official poison register (order No 16/1972. (IV. 29.) MT [Council of Ministers] Paragraph 5. section (1)) and the so-called prohibited poisons not included in the poison register.

The physician is familiar with the nature and effect of poisons listed in the register, as well as with the occasionally possible methods of neutralizing or lessening this effect. The situation is different with the prohibited poisons, because compared to the former, these latter involve increased danger; this difference is to be considered during the course of meting out the penalty.

In connection with poison, failure to take the measures specified to exclude the endangerment is also subject to punishment. In order for this eventuality to occur it is not necessary that direct danger should exist to human life, bodily integrity or health. If within the spectrum of his profession the perpetrator causes direct danger or other serious consequence, he must be held responsible on the basis of Paragraph 171.

Indolence as Public Menace

To Paragraph 266.

1. Any person capable of work is subject of this offense. In our country, work is the right of every man capable of work, as insured by the Constitution and materialized in reality.

For the socialist man work is not only a method of obtaining the means for

maintaining his existence but also a necessity of life. The need to satisfy the elementary necessities of existence (food, clothing, etc.) appears with compelling force also in the man who is not working, and -- in the absence of material means -- it urges the indolent to obtain the goods by criminal means. Due to his situation, such person endangers public safety as potential perpetrator of theft and other criminal forms of acquiring without work.

2. The committing activity is not simple passivity ("nonworking"), but leading a lifestyle of avoiding work.

The person incapable of work does not "avoid" work; therefore he does not accomplish an offense by not working.

It is possible that the individual is capable of working, and there also would be no objective obstacle to his working, but he possesses some legal source of existence. Such are for example earnings derived from earlier, useful activity (wages saved up, author's or innovator's fee), winnings, inheritance, etc. At the most, these cases can be disapproved of morally, the legal object is not endangered, thus offense does not occur.

According to this, that person capable of work conducts indolent lifestyle from the penal law's viewpoint who does not accept work to insure his livelihood in spite of not possessing the material goods to insure his existence. Only under such circumstances does his behavior represent danger to public safety.

3. According to the Proposal's viewpoint the first occasion of committing publicly dangerous indolence does not accomplish an offense. Offense is accomplished only if the perpetrator — either for the misdemeanor or rule-breaking of publicly dangerous indolence — has already been punished earlier, and two years have not yet passed since serving his punishment or since the end of its administrability.

The perpetrator's environment can significantly influence indolence. It is easier to lead an indolent way of life in the bigger cities. Therefore the Proposal makes it possible to apply banishment as supplementary punishment.

Organizing Prohibited Games of Chance

To Paragraph 267.

Prohibited games of chance lead many people onto the path of gambling which threatens with moral and material decay. The prohibited game of chance is such game — played in money or in goods with monetary value — in which winning or losing depends on chance.

The Proposal places that person also on the same level with the organizer of such game of chance who derives profit from the prohibited game of chance by making the room available to the players to play. According to the experience of criminology this is usually undertaken for ample profit.

Such person can also commit this misdemeanor who besides this also has

a provable, legal occupation, but for the most part such persons do it who are unwilling to do honest work and who also make others susceptible to the life of not working by this. This is the reason for the Paragraph's place in the system.

Title II.

Offenses Against Public Tranquility

Tranquil social atmosphere, in which respect for the legal order, mutual appreciation, respect for each other's personality and legal interests prevail, is an important condition for society's balanced growth. Antisocial forms of behavior deriving from nationality or religious prejudice, selfishness or moral licentiousness, spreading rumors of hostile origin are often suitable to disturb public tranquility in dangerous degrees without fulfilling the fact situation of any of the offenses against the state, humanity, property, etc.

The primary effect of offenses against public tranquility is restlessness, confusion recognizable in the public opinion, this common characteristic of them justifies their being included in an independent title.

Agitation against the law or the authority's measure, harm to the community, spreading unfounded rumors, disorderly conduct [rowdiness], violation of public modesty and taking the law into one's own hands belong here.

Agitation Against the Law or Orders of the Authorities

To Paragraph 268.

1. The basis of public tranquility is respect for the law and for the orders of authorities. The offense is accomplished through attacks on these and on direct objects.

This act is suitable for disturbing the public tranquility if the agitation for disobedience is addressed to a broad circle [audience]. If someone agitates one or two persons without success for disobedience against the law or against an order of the authorities, his act in general does not reach the level of requiring to be prosecuted by penal law. Therefore the Proposal declares agitation for disobedience against the law or other statute or order of the authorities to be offense only if committed before the general public. Paragraph 137. point 10. defines the concept of general public.

The offense is of formal (endangerment) character, that is it is not necessary for its occurrence that it should move the addressee to disobedience. If offense is committed under the effect of agitation, the perpetrator may answer [be held responsible] for incitement.

Violation of Community Feeling

To Paragraph 269.

1. The fact situation of this Paragraph's section (1) agrees with the fact

situation of agitation defined in Paragraph 148., except for the purpose which occurs as an element of fact situation in the latter. The purpose makes agitation a political offense, and with respect to this lack of purpose against the state it is justified to place violation of the community feeling among the offenses against public tranquility.

The act — which can be either physical or verbal — must be such that it is suitable to generate hatred against any of the direct objects listed in section (1) points a) through d). An offense of endangerment being involved, it is immaterial whether the hatred is actually awakened in the observers.

2. Section (2) regulates that relatively milder form of violating the community feeling which in short can generally be called revilement. While the act defined in section (1) can lead to awakening of hatred in its addressees, the second [section (2)] "discredits" the Hungarian nation etc., diminishes the respect it enjoys. It is obvious that when committed verbally or in writing, more or less reasoning, stating facts, or referring to facts is necessary in the former, [but] for the latter the expression of disrespect, berating, mud-slinging is sufficient.

3. The qualifying circumstances regulated in section (3) result in more severe punishability of the acts defined in section (1) as well as in section (2) (naturally in an extent proportional to the basic case). The reasons for the qualifying nature of general publicity are identical with those elaborated on in the justification to Paragraph 268.

Several viewpoints justify that the perpetrator acting as member of a group deserves more severe punishment: the group as concentration of strength, has an intimidating effect on those who wish to take stand against the criminal manifestation, at the same time it increases the perpetrator's self-confidence, persistence. Acting in a group misleads those elements with weak critical sense and who are inclined to imitate, creates the impression in them that the statements voiced are true, or that the berating is justified, because so many agree on it. Besides this it also always carries the danger that conscious enemies of the state's order also try to take advantage of the stirred-up public tranquility.

Spreading Rumors

To Paragraph 270.

1. Spreading rumors is one of the characteristic methods of disturbing public tranquility.

Any fact can be the content of a rumor. Spreading rumors indirectly affects, endangers various legal objects, as for example the state's foreign policy interest, interest of national defense or purchasing power of the forint, etc. The danger is hidden in the possibility that the rumor spreads, generates confusion and restlessness in the masses, and under the effect of this restlessness the population exhibits such behavior which harms the above interests. Thus the common legal object requiring primary protection is public tranquility.

2. The rumor's typical form is fabrication, made-up untrue news. But such fact can represent no lesser danger which has certain truth content, but stating or spreading it is done in a distorted manner.

Mainly the communication of facts taken out of their context in a distorting manner must be understood under distortion. Elements which can be judged favorably and unfavorably can mix in a given event, and prejudicial communication — selecting according to its own viewpoints — contains only the favorable or only the unfavorable elements. The "truth" of a fact in general cannot be judged in isolation; information faithful to reality refers to the most important accompanying circumstances, possibly also to the precedents and consequences in the necessary extent.

3. Spreading rumors is also an offense of endangerment; thus it is not a condition of its punishability that it actually disturb the public tranquility. But it is absolutely necessary that the perpetrator's activity be suitable to cause such result, without this the act's dangerousness to society is missing. The perpetrator's person and the circumstances of commission must also be taken into consideration when judging dangerousness to society, so that the weapon of penal law would not be applied in cases of exaggerations and generalizations which cannot be taken seriously.

Rowdiness

To Paragraph 171.

1. Offenses are also contrary to the rules of living together in society, that is they are antisocial. In rowdy acts a certain excess accompanies this constant element of the objective side: the act is provocatively antisocial. Others must notice the act, otherwise it cannot be suitable to generate indignation or panic [alarm].

The act itself must express provocative antisocialness. Provocative antisocialness means conscious disregard of the rules of living together in a socialist society, to which the moral sense of working people reacts with indignation or alarm.

Rowdiness is intentional offense. The perpetrator must be clearly aware that his act is provocatively antisocial and because of this it is suitable to trigger indignation or alarm in others.

According to the Proposal rowdiness can be accomplished only with violent behavior. The violence can be aimed against persons as well as against things. In rowdiness accomplished by violence against a person violence means touching the injured party's body with the intent of attack; due to the offense's character it is not necessary that this be suitable to overcome serious resistance by the injured party. Therefore rowdiness can be accomplished also by for example a slap on the face or knocking someone over. Violence against

objects generally involves harm to the object's substance, for example ripping an item of clothing, breaking a window, etc.

2. Rowdiness — as most of the offenses against public order — is an offense of endangerment. Thus it is not an element of it that indignation or alarm should actually occur; it is sufficient if the specific act is directly suitable to cause such result under the given circumstances.

But it would mean improper application of the law if even minor disturbances of order would also be prosecuted as rowdiness. It must not be lost from sight that an offense against public tranquility is involved; even qualitatively this is more than what the endangerment of the tranquility of one or two persons means. Thus if the manner of commission is such that only few can obtain direct information about what happened, the act is objectively unsuitable to endanger the public order, more closely the public tranquility.

3. Even though actual disturbance of the public tranquility is not a fact situation element of rowdiness, very often this result does occur. According to the Proposal it is a qualifying circumstance if the disturbance of public tranquility is of severe extent. (Usually, severe disturbance must be understood to also mean lasting disturbance.) Naturally this is a question of fact which the court decides. From the orders of Paragraph 15. follows that this severe consequence can be blamed on the perpetrator only if his guilt covers it — at least in its careless form.

The other qualifying circumstance regulated in section (2) is commission in group (Paragraph 137. point 11.). This order serves the purpose of defense against hooligan bands. Acting in a group encourages the perpetrators, at the same time it has an intimidating effect on those who would still be able and willing to prevent the rowdiness of a person or two.

Violation of Public Modesty

To Paragraph 272.

1. The Proposal lists this misdemeanor of violating modesty — which is usually referred to by the name of pornography — among the offenses against public order, more closely against public tranquility.

Hypocritical sanctimoniousness as well as uninhibited sexual licentiousness are both such extremes which are far from the socialist moral. In questions of sexual life also it stands in favor of honesty and to provide information to the masses, but it disapproves sexual licentiousness and particularly the use of sexuality for business purposes. It also uses the tools of penal law against this type of "creations" covered by "artistic" glaze without any intellectual message, which at best distract youth's attention from the more valuable goals, and at worst can also make them prisoners of harmful and unhealthy habits, aberrations.

2. Objects violating modesty are such things referring to sexual life or such writings of similar content which injure the sexual moral prevailing in society.

But the treatment of questions of sexual life for scientific or information disseminating purposes, as well as depicting the human body for similar purposes or for purposes in which artistic efforts materialize, are not among the objects which violate modesty. Naturally a definition of such exactitude cannot be given on the basis of which distinction could be made unambiguously between scientific and artistic creation on one hand, and pseudo-scientific pornography and immorality depicted under the guise of art on the other. The person applying the law must decide this in each case.

3. The products of pornography — due to their object — are items of merchandise. They become dangerous to the public order when placing them on public display or selling them creates the way for them to the public. Without this they do not disturb the public tranquility.

Therefore the Proposal orders the production or acquisition of an object which violates modesty to be punished only if this is done for the purpose of sale or public display. Public display or sale themselves are always to be punished.

Taking the Law Into One's Own Hands [Lynch-Law]

To Paragraph 273.

1. The Proposal places the fact situation of taking the law into one's own hands among the offenses against public tranquility. The reason for this is that not the act's purpose but the law-violative method of gaining effect for the law makes it necessary to declare taking the law into one's own hands to

be an offense. Taking the law into one's own hands does not, or does not necessarily violate the property relationships, but it may lead to severe disturbance of the public order, and it always endangers the public tranquility.

2. In general the state cannot tolerate that those who are entitled to something gain validity for their demands by violent individual action. Section (2) represents an exception from this: if the law expressly permits this kind of thing, then — due to the lack of illegality — no offense is involved. Examples for this are application of necessary force to exercise the protection of property, or threat which promises that report will be made to the authorities in the interest of reimbursement for damage caused by an offense.

Title III.

Offenses Against Public Confidence

The Proposal groups such fact situations in this Title which in some manner are connected with documents.

The documents — starting with the national governmental measures, through documents of economic content and of scientific value, to the multitude of writings, letters, notes concerning the personal and property rights of citizens — can be in connection with practically all manifestations of public and private life. If we seek such a common element which can be considered as characteristic of all kinds of documents as object of penal law, then this is

the confidence placed in the realness of the documents. If this confidence were lost, the undisturbed flow of social and economic life would be broken and the people's feeling of security would suffer serious damage.

Based on these considerations the Proposal places the fact situations of offenses connected to documents in the Chapter of offenses against public order, under the above title.

Falsification of Public Documents

To Paragraph 274.

1. The Proposal does not define the concepts of either the document or the public document. That is, these are not uniquely penal law concepts but are used also in other branches of the legal system (civil law, national governmental law etc.).

When wording the fact situations, the Proposal kept in mind the concept of public document defined in the Pp [Civil Process Law] (Paragraph 195. section (1)).

The Proposal does not limit the area of objects of commission to documents prepared within this country, that is, falsification of a foreign public document is also to be punished.

2. Falsification of public documents is an endangerment offense. It is not an

element of the fact situation that someone should suffer harm due to the act; and the endangered existence of public confidence as the legal object — due to the importance of interests connected to public documents — usually does not have to be proven. Naturally the degree of danger can differ greatly with the case.

3. The forms of commission according to section (1) point a) are: preparation of false "public document" and falsification of the content of a true public document.

Preparation of a false public document does not necessarily mean that the false document must possess all of the attributes required of the true document, only that the false document be suitable to being confused with the original, or real one. Identicalness of the forms is not necessary, only their similarity.

Falsification of public document occurs also if the perpetrator corrects the erroneous content of a public document to correspond with reality, because permitting such acts would open the gate to undermine the public confidence placed into public documents. It is a different question that in the given case the dangerousness of such act could be so small as to exclude the necessity of punishment (Paragraph 28.).

4. In the act according to section (1) point b) the committing behavior is represented by use. In the first formation of point b) the object of commission is a public document falsely prepared or falsified by someone else. From

the structure of this fact situation follows that if the falsifier and user is the same person, one count, not two, of public document falsification occurs, and it is public document falsification defined in point a). In the second formation of point b) the object of commission as public document is real, but in spite of this its use is fraudulent because untruthfulness is being testified to by it.

Point c) speaks of the so-called intellectual falsification of public documents, which is a unique method of public document falsification committed through an indirect culprit. The preparer of contentually false public document (its direct "culprit") is the official person — who has been deceived — authorized to prepare it, and the indirect culprit is that person according to whose wish and on the basis of whose cooperation the untruthfulness gets into the document. The untrue information must refer to the existence, change or termination of some right or obligation

5. Intellectual falsification of public document often occurs due to carelessness of the person supplying data or preparing the document. Objectively such act can be just as dangerous as the one committed intentionally, therefore in practice the person making the statement is usually also warned [alerted] of his penal law responsibility. Section (2) creates the foundations of this responsibility.

To Paragraph 275.

This Paragraph contains the fact situation of such public document falsification which has a special subject: the official person (Paragraph 137. point 1.).

The committing activity described in point a) agrees with the one according to point a) of the previous Paragraph's section (1). Point b) of the previous Paragraph's section (1) is void with respect to the present Paragraph, and point b) of the present Paragraph corresponds to the (intellectual) method of commission included in its point c).

The official person is an official person only within his official authority (case authority); therefore according to the Proposal's interpretation it is a fact situation element that he should commit the act by abusing his official authority. Without this he can be held responsible for public document falsification only on the basis of the order of Paragraph 274.

The penalty item of this Paragraph is more severe compared to the previous one because this act at the same time is also abuse of the office; the text also expresses this. Falsification of public document defined in this Paragraph creates agglomeration with the possible other offenses -- which usually involve bribery.

Falsification of Private Documents

To Paragraph 276.

1. The expression "private document" is a supplementary concept. The first step of systematizing documents was to elevate the public documents — as a document type with particular significance — from among the documents. All other documents are private documents.

The document is such writing which proves that some legally significant fact (primarily right or obligation) came into existence, changed or ended (it could be that at the same time it also embodies the fact).

The document proves by way of writing, which does not necessarily mean the writing of letters. Writings of drawing, numbers, or signs may also be involved if the method of writing in question is suitable to express the content of thought. It also is not a requirement that the document's material should be paper; It can also be other material suitable for the placement of written signs. But it is necessary that it should be able to be determined from whom the document originates, because it contains a declaration and this can have legal significance only if the person [identity] of who made the declaration can be established.

2. Preparation of a false private document or one with untrue content, or falsification of an existing one in itself does not reach the degree of

dangerousness to society required for punishing prosecution. Such act becomes subject to punishment only if the mentioned private document is used to achieve legal effects (to prove the existence, change, or termination of right or obligation).

From the just mentioned method of regulation follows that "pure" private document falsification is a rarity in the judicial practice. Private document falsification is a typical act of utility: usually it promotes commission of another offense or serves to cover this up.

Abuse of Documents

To Paragraph 277.

1. The significance of documents requires that not only their falsification be punished but also the other abuses committed with them. Illegal acquisition, destruction, damaging of a document to which someone else is entitled or concealing such from the person entitled to it is dangerous to society. The expressions "steals, embezzels, illegally appropriates" are not suitable to designate the acts which commit is because they refer to offenses against property, and usually the document has no property value.

2. From the public document's increased significance follows that its illegal acquisition etc. committed intentionally is subject to punishment regardless of whether it occurred for the purpose of causing disadvantage. Naturally the

possibility of disadvantage must exist, thus for example such old public document which no longer refers to relevant facts from the viewpoint of anyone's rights or obligations cannot be the object of commission in this offense.

But with respect to private documents it is also an element of the fact situation that the perpetrator must be motivated by a purpose of causing disadvantage. This solution is appropriate to the construction of private document falsification, which does not punish the act of falsification if the element of use is not connected to it.

Providing False Statistical Data

To Paragraph 273.

Even though the text does not mention the format of document, it can be seen easily that this Paragraph also regulates document offenses. The overwhelming majority of furnishing statistical data and information is requested usually by filling out some questionnaire or other printed form. And if the poll commissioner or other member of the statistical apparatus exceptionally receives such data verbally, he must write it down immediately so that it could be used in statistics. In such case the intellectual method of committing document falsification can be recognized.

Title IV.

Offenses Against Public Health

The Proposal regulates the offenses against man's health in Chapter XII.

Title I. The majority of fact situations found there are material offenses, but there are also endangerment offenses among them.

It is a common characteristic of these latter that they punish the causing of direct danger, that is there must be one or more injured parties within the area where the act presents a danger (specific danger).

The offenses included in the present Title also endanger health, but this danger is more abstract rather than concrete [specific]. In certain fact situations (abuse of harmful public consumption item, causing harmful habits) the circle of injured parties is relatively more concrete; in others it is quite general. The dangerousness of offenses which damage the environment and nature is generally indirect; they endanger the population's health only through multiple transmissions.

The public health regulations are those national governmental regulations which are designed to protect the population's health against the just mentioned danger in general. According to Paragraph 6. section (1) of the health care law (law No II. of the year 1972) "it is the task of public health care to investigate the reasons of those factors of the environment which have

damaging influence on man, the health care respects of decreasing or eliminating these ..."; and according to section (2) "it is the task of epidemic care to prevent and overcome the contagious diseases, epidemics ...".

When the penal law speaks of offenses against public health, it also includes epidemic care under the concept of public health care. Besides this it also expands the concept of public health care in the sense that it includes in this Title not only those danger sources which derive from the environment but also the fact situations subject to punishment which derive from certain human activity (quackery etc.).

Abuse Involving Harmful Public Consumption Items

To Paragraph 279.

1. Considering that some public consumption items (for example tobacco products, alcoholic beverages) are harmful to health, only such harmful public consumption items belong under this Paragraph of the Proposal in which harmfulness is not a constant, regular characteristic of the item but is an irregular characteristic. Such are for example the poisoned or spoiled foodstuffs, toys, cosmetics, wall paint containing materials harmful to health.

Nicotine content is not an irregular characteristic in tobacco but it is in other enjoyment items. The characteristics of methyl alcohol (wood

alcohol) are regular characteristics in the sales/purchase of methyl alcohol, but appear as irregular characteristics in liqueur adulterated by methyl alcohol. Thus in the latter merchandise item, besides the merchandise's regular characteristics the harmfulness to health mentioned in section (1) is an extra: it is not a characteristic, regular feature of the merchandise in question.

The irregular characteristics develop in public consumption items generally due to manufacturing faults, spoilage, or intentional adulteration.

2. Preparation of harmful public consumption item is an offense if it is done for the purpose of sale; thus the method of committing it according to section (1) is purpose-oriented.

Section (2) punishes sale [placement on the market]. This is not a purpose-oriented offense, therefore there is no obstacle to make its careless variation punishable. Thus if the preparer himself places the merchandise into circulation, agglomeration does not occur but the felony according to section (2) takes place, or -- in case of careless guilt -- the misdemeanor according to section (3) instead of this. Naturally the orders of sections (2) and (3) are also valid for the person who places merchandise prepared by someone else into circulation, because section (1) defines an essentially preparatory act.

Separation is justified by the fact that the possibility still exists for harmful merchandise still in the possession of the person preparing or storing it that someone (manager, controller, etc.) notices its harmfulness (for example that it has spoiled) and prevents it from getting to the consumers.

Damaging the Environment

To Paragraph 280.

1. Besides its advantages, economic progress also has harmful side effects. Such is particularly the damaging of natural environment, which endangers the population's health and even the economic progress itself, has a disadvantageous reverse effect on it.

Law No II. of the year 1976 concerning the protection of human environment was created in the interest of preventing or decreasing these dangers. Materialization of the basic purposes of this law must be insured also by penal statutes.

The protected objects of human environment are: the land, water, air, the living things (fauna and flora), the regional and settlement environment (law No II. of the year 1976, Paragraph 9.).

2. The Proposal declares contamination, damaging or destruction of the protected object of human environment to be a felony in section (1) in that case if such damaging is of significant extent.

The environmental protection law's Paragraph 10, serves as guidance for determining when the extent of damage is significant. According to this the damage must be such that due to its effect the characteristics of the protected object change disadvantageously or the human living conditions deteriorate. Thus damaging the environment is a material offense.

Disadvantageous changes or deteriorations of the living conditions cannot be listed exhaustively. For the most part the extent of contamination and harm can also be determined by quantitative methods; according to the environmental protection law that contamination or harm is damaging which exceeds the limit value defined in separate statutes. Our present legal statutes establish limit values for water and air contamination.

3. According to the Proposal, the danger to society by significantly damaging an object under environmental protection occurs within the scope of public health as the legal object. The fact that such damaging is dangerous from the viewpoint of public health has been proven scientifically and is also publicly known; it does not have to be proven.

Section (2) regulates it as a qualified case of the offense if the just mentioned abstract danger becomes concrete, that is the life of one or more people becomes endangered due to the act.

4. According to section (3), damaging the environment — considering the significance of the object upon which it was committed — is to be punished

in the case of careless commission also, and this is so in the basic case as well as in the case defined in section (2). A significant portion of the actions which harm the environment is not intentional — very often their form of guilt is luxury [or effluent, possibly affluence; unclear. Translator] —, but regardless of this their damaging effect is very great, at times it can be irreparable.

Causing Harm to Nature

To Paragraph 24.

1. Nature is an outstandingly important part of the human environment. But nature must be protected even besides this.

Those objects of nature to which the orders of this Paragraph refer, are not in as direct contact with society's living and working conditions as the objects of environmental protection, or the connection is looser than for the previous one. But extinction of some animal or vegetation type makes the life of humanity poorer; this is also valid for the loss of protected geological formations and nature protection areas. That danger, which cannot be excluded, must also be mentioned that in certain cases of causing harm to nature severe shortages may develop in the so-called food chain by disturbing the ecological unity developed by nature, and this can be the source of disadvantages to the national economy. It cannot be foreseen precisely when such abstract danger may become concrete.

2. Section (1) lists the objects of commission in three groups.

a) The Proposal limits penal law protection connected to plants, animals, and eggs of animals to those which are protected at an increased extent.

That is, the circle of protected plants and animals is too broad, in law violations connected to these usually it is sufficient to hold (the perpetrator) responsible for rulebreaking (order No 17/1968. (IV. 14.) Korm., Paragraph 111.). The possibility of holding someone responsible by penal law is justified only for the plant and animal types under the mentioned protection. Which type of plant or animal receives increased protection is a question of interpreting the law. It is not practical to define it by statute because the degree of protection may modify, as it also depends on factors exposed to change, for example as the number of animals increases, as their value changes. In a given case it can be clarified by hearing the National Office for the Protection of Environment and Nature and by involving experts, whether the plant or animal type receives increased protection.

Protection of birds living in the wild also extends over their eggs. Penal law protection attaches to the egg of an animal receiving increased protection only if the act endangers the animal's offspring coming into existence. Offense cannot be committed for an egg from which no offspring can hatch.

b) Caves are protected on the basis of legal statute No 18. of the year 1961. concerning the protection of nature. Other geological formations (for

example rock, mountain) which are valuable from the scientific viewpoint, due to their rarity or speciality can also be declared protected.

c) Areas under nature's protection are the nature protection areas, regional protection districts, and the national parks.

3. For objects defined in section (1) point a) the behavior which commits the offense is destruction and collection. In connection with collecting eggs reference must be made to point 2. a) of the justification, that is collecting the egg of an animal receiving increased protection is an offense only if the collection can lead to the individual's death.

With respect to caves and protected geological formations only severe damaging accomplishes an offense. In case of damaging of minor significance, holding someone responsible by penal law is unnecessary. Whether the damaging is serious is such a question of legal interpretation which can be clarified in the given case by involving an expert.

In case of an area under nature's protection the offense is accomplished by changing it in a disadvantageous manner. This can be for example disturbing the beauty, the view of the area, the growth of its flora and fauna, changing its type of use, cutting down trees.

4. The Proposal considers the offense's basic case to be a misdemeanor threatened by alternative punishment.

More severe penalty item is necessary when destroying or collecting a plant, animal, or animal's egg receiving increased protection causes the mass death of these.

Damaging a cave or protected geological formation, and further the disadvantageous change of an area under nature's protection comes under more severe judgement if due to this the protected object is destroyed. The Proposal declares these behaviors to be felonies.

5. The danger the qualified cases defined in section (2) present to society is so significant that it is justified to punish not only the intentional but also careless commission. Penal law responsibility is not necessary for careless commission of the basic case included in section (1).

Abuse of Narcotics

To Paragraph 282.

1. Neither the use nor the preparation of narcotics have traditions in our country. But in other countries of the world the use of narcotics and criminal activity connected to it are spreading rapidly. We cannot omit to use the means of penal law either in the interest of preventing their spread in this country.

The circle of narcotics suitable for harmful enjoyment changes. The reasons for this are partly the changing habits, demands of their users (stylishness

of certain narcotics and methods of enjoying them), and partly the advance of chemistry and chemical technology which produce new chemicals and make new ones suitable for harmful enjoyment. Yet it would not be proper to define the concept of narcotics in the penal law. That is, from the penal law's viewpoint those [materials] are to be considered narcotics which are declared narcotics by separate statute.

2. Besides the committing behaviors listed in section (1) (preparation, obtaining, possessing, sale, transporting across the country's borders) the Proposal's section (2) also threatens that person with punishment who gives narcotics to a person who has not yet completed his eighteenth year of life. That is, it is international experience that the use of narcotics becomes a habit the most easily and the fastest in the juvenile age groups. And the harmful effects of narcotics prevail most strongly in a developing organism, and early use of narcotics — by holding the individual back from learning any kind of useful occupation — practically fatally sweeps its victim into the criminal way of life.

3. According to crime fighting experience the trade of narcotics is in the hands of narcotic speculators and organized criminal bands specializing in this. These — mostly within the framework of criminal associations organized on the international scale — at times conduct business deals worth millions and involving huge quantities of narcotics; their activity is also followed by corruptive criminal activity and criminal activity against life.

With respect to what has just been explained, the Proposal threatens those acts with more severe punishment as qualified cases which are committed as business, in criminal association and involving significant quantities (value) of narcotics.

4. While the acts defined in sections (1) through (3) are felonies, sections (4) and (5) regulate misdemeanor formations.

Section (4) orders that preparation for the felony defined in section (1) be punished; this is made necessary by the act's high degree of dangerousness to society.

Section (5) desires to separate the victims of narcotics and those who derive profit from it, from each other. The severity of the law must prevail against the latter. Even though the threat of punishment cannot be omitted in the case of the former either -- in the interest of deterring --, this must be qualitatively more lenient. The characteristics of this misdemeanor fact situation are: absence of the intent of sale and small quantity of the object of commission.

Inducement of Narcotic Habit

To Paragraph 283.

This Paragraph has a supplementary role in the penal law battle against narcotics.

It has been found that among juveniles the interest towards narcotics very often begins with the use of such materials which are not on the list of narcotics but which — due to their numbing effect — are suitable for abnormal enjoyment. Numerous medicine types can be found among such supplementary chemicals, but there are also other materials, for example glues among them.

Usually the health damaging effect of such materials remain below that of narcotics. The reason for declaring this to be an offense is primarily that danger involved in awakening the harmful inclination that the young person who gets used to using such materials will eventually become a user of narcotics.

It is the task of medical experts to determine whether some material possesses the effect required in the fact situation.

Violation of Epidemic Control [Quarantine] Rules

To Paragraph 284.

1. Section (1) declares violation of health care management measures taken in the interest of preventing contagious diseases from being brought in and from spreading to be misdemeanor. Accomplishment of the misdemeanor does not depend on whether anyone gets sick as a result of violating the rules; such effect (result) is significant only from the viewpoint of meting out the punishment.

2. The fact situation of section (2) concerns such situation in which the

health care authority takes the necessary isolation, supervisory and control measures in an area already affected by the contagious disease and the perpetrator prevents [hinders] overcoming the existing epidemic by violating these. These measures are aimed at avoiding the danger of the epidemic's time being prolonged, the course of the illnesses being more severe, cured persons relapse into the illness, etc. Such result of the rule violation (if provable) in this case also are only factors in meting out the punishment.

3. Section (3) contains endangerment fact situations similar to the foregoing with respect to contagious animal and plant diseases.

Quackery

To Paragraph 285.

1. The subject of quackery is a person not authorized to conduct medical practice; section (3) contains the definition of this concept.

The committing activity is performance of activity belonging within the sphere of medical practice, with that additional condition that the culprit performs the activity for compensation or regularly. The occasional "medical amateur" also endangers the health of others; but in such case the danger to public health as a new legal object is still remote. But if the element of profiteering is added to to occasional amateurism [dabbling] also, in this case the act reaches the desired level of where it has to be punished. In this variation of commission it also serves as legislative justification that proving

regularity is very difficult -- exactly for the case of materially motivated quackery.

It is obvious that regular medical amateurism [dabbling] endangers the public health.

2. It is not a fact situation element of quackery that it harm the patient's health, or even that it directly endanger his life, bodily integrity or health. (If such fact situation is also accomplished, this becomes agglomerated with the quackery.) Naturally from the viewpoint of meting out the punishment it is not immaterial what the results of the quackery practitioner's actions were, and to what extent it corresponded to the standpoint of medical science.

3. Quackery which is misdemeanor in the so-called basic case, becomes qualified as felony if the perpetrator pretends that he is authorized to conduct medical practice.

In the case regulated by section (2) actually a composite offense is involved which creates legal unity between quackery performed for compensation and fraud. By passing himself off as a doctor, the perpetrator deceives the patient and this is how he obtains the "doctor's honorarium".

Confiscation

To Paragraph 286.

Taking Paragraph 77. section (3) into consideration, the Proposal orders that

the object which was involved in committing the five offenses listed in the present Paragraph must be confiscated. The listed offenses are in connection with objects endangering either the public safety (Paragraphs 263., 264. and 265.) or the public health (Paragraphs 279. and 282.); this is the motivation for the confiscation rule.

The Proposal ties confiscation to that alternative condition that the object is the perpetrator's property, or (even if it is not his property) owning it endangers the public safety. In this respect the endangerment of public health is synonymous with endangerment of public safety (the former is include in this latter).

In case confiscation is impossible or is frustrated, the perpetrator in the cases of this Paragraph cannot be required to pay the object's value (which is otherwise required by Paragraph 77. section (4)). The requirement to pay the value is a measure required of perpetrators of corruption offenses and ones committed for the purpose of material profit; it is unnecessary to apply it in offenses against the public order.

Chapter XVII.

Economic Offenses

Economic offenses interfere with efficient operation of the socialist plan economy. In order to insure efficient operation of the plan economy the tools of penal law can be used depending on the character of the various economic offenses.

Penal law is the primary means of action against counterfeiting money and stamps. These acts are dangerous to society in such degree that prosecuting them by penal law is absolutely justified.

The Proposal created the legal fact situations of offenses harming the order of economic operation and of the financial offenses by taking into consideration that sufficient protection can be insured against those behaviors which harm the protected interests to a lesser extent also by using the rulebreaking and other (for example labor code) sanctions. In these offenses commission involving significant amounts or values usually calls for determination of a more severely qualifying case.

In defining the offenses which violate the economic operating obligations the Proposal starts out from the point that in protecting the interests involved here, the penal law represents only the last tool [resort] and is used only if the economic means and other legal responsibility forms do not prove sufficiently effective. Thus besides the economic and other legal tools the use of even the most severe state sanction, punishment by penal law may also be justified against those behaviors which most severely harm the protected interests. The Proposal gives expression to this penal policy goal in defining the individual legal fact situations by making the various harms to the national economic interests as well as commission involving significant quantities or values, elements of the legal fact situations in the basic cases of the offenses.

Title I.

Offenses which Violate the Economic Responsibilities

1. The Proposal lists those offenses among offenses harmful to the economic operating responsibilities which harm the order of economic incentives, economic control, the order of investments, the state's credit monopoly, interests tied to the quality of products, purity of the economic life and the monopoly of foreign trade, and the order of conducting the foreign trade. Besides the interests mentioned which can also be seen precisely from the legal fact situations, the Proposal protects those production, distribution, etc. relationships by a general framework fact situation (Paragraph 247.) which are directly regulated by law. Creation of such general framework fact situation is necessary because economic management is dynamically progressing and progress goes hand in hand with the fact that from time to time management of the economy will specify different obligations and prohibitions for the economic operators.

The Proposal qualifies violation of the responsibilities of economic operators as offenses if violation of the responsibility was committed involving significant quantity or value of product or if as a result of the violation of responsibility harm also occurred to some economic interest.

2. The Proposal means agglomeration of harms to more types of economic interests by the concept of disadvantage to the national economy written into the

offenses' qualified cases. If violation of a responsibility interferes with planned economic operation not only in the area directly affected by the responsibility but its effects extend in more directions, the effects in more directions may cause such confusion in the regular course of planned economic operation which also causes disadvantage to the national economy.

Disadvantage of significance to the national economy can be established if the offense's consequences hinder the smooth operation of the individual economic branches, cooperation between the economic branches, smooth completion of the economic processes, functioning of the market's merchandise and money conditions regulated in a planned manner, smooth materialization of the effect of the regulating tools, or if they lead to failure to fulfill significant responsibilities existing towards the state. But harm to the national economy's interests can occur in such cases also when the act involves relatively smaller values of harmful consequences, but interruptions occur for example in the population's supply of important, fundamental products.

3. Offenses violating the economic operating responsibilities are committed generally within the framework of the economic operating organizations. But it cannot be excluded that individual economic operation may also cause harm to the national economy's interests.

Violation of Economic Operating Responsibility

To Paragraph 287.

1. By declaring the violation of economic operating responsibility to be an

offense the penal law provides assistance to forcing the fulfillment of certain responsibilities specified by the economic management. In this case the penal law creates such a general framework fact situation which serves to protect the economic management regulations in those areas of the planned economic operations which are not named in the legal fact situation. Therefore compared to Paragraph 287. the other economic offenses are to be considered special rules.

2. With this fact situation the Protocol insures protection only for those economic management directives which are contained by the statutes or by orders of organs which are authorized to issue statutes. Separate statute (legal statute No 24. of the year 1974.) gives orders about publishing statutes and about their taking effect. As applied in this section, only those management standards qualify as statutes which satisfy the conditions defined in this separate statute. And those -- usually specific -- orders are to be understood by orders of organs which are authorized to issue statutes which assign responsibilities to the economic operating organs.

3. The responsibilities refer to production of products, their use, sale, reporting them [to the authorities], making them available, keeping them in supply or handling them. The responsibilities mentioned limit the independence of the economic operating organs, because they define what must or must not be produced and how the product must be used. Paragraph 137. point 9. defines the concept of product.

Violation of the responsibility or prohibition of production and use qualify as offense if it harms the national economy's interests. This harm to interest is the criterion which forms the border between rulebreaking and offense.

Harm to the national economy's interest expresses that the result of violation of responsibility can be not only property [i.e., financial] disadvantage, because the behavior is subject to punishment also if the responsibility's violation possibly represents an advantage to the economic operating organization (for example the production of such product which is not permitted but producing it increases the economic operating organization's profit, or the failure contrary to the responsibility to produce a product which does not increase the profit).

Harm to the national economy's interest is such concept which is always the function of violating a responsibility. If for example the responsibility involves merchandise selection which serves to supply the population then the result of violating the responsibility is harm of the interests tied to supplying the population, if the responsibility involves tight material management then the harm of interest manifests itself in the given area's material management.

The disadvantage to the national economy which calls for establishing the qualified case includes not only that harm to the national economic interest which is tied directly to violating the responsibility but also those effects which touch other areas of the national economy. If for example extraordinary

import is needed due to the prohibited use of a given product, the violation of responsibility harms not only the interests tied to material management but also those tied to planned foreign trade, and these harms can be valued together as harm to the national economy.

Misleading the National Economy's Organs

To Paragraph 288.

The economic management not only assigns responsibilities to the economic operating organs but also influences their operation with various economic assistances. Obtaining the various assistances means economic advantage to the economic operating organ. In the interest of realizing various economic policy, social policy, etc. goals the state provides material assistance to budgetary organs and even to citizens, besides the economic operating organs.

Obtaining the economic advantage by deceit interferes with distribution of assistance according to the plan and by this with the given area's planned economic operation.

Economic advantage means all types of material assistance (for example price supplement, credit, state rebate, foreign currency permit, etc.).

The economic advantage [benefit] qualifies as illegal if the conditions for obtaining it are missing.

Deceit corresponds to the committing behavior written in the legal fact

situation of fraud. The usual tool of deceit is falsification of the data in an application or report, but preparation of an intentionally false prognosis can also be included here. The deceit is used for the purpose of obtaining the benefit.

That organ must be understood under organ of the national economy authorized to make decisions which has the right to make the decision about granting the given economic advantage. The ministries, organs of national authority, financial institutions which give orders about extending credit, council organs which decide the granting of various material assistances, etc. can be listed here.

The offense's result is that significant disadvantage is caused. The concept of significant disadvantage is closely connected to the character of the advantage, and it can be established if the given advantage did not fulfill the economic function for which it was intended.

The disadvantage to the national economy written in the qualified case can be established if extension of the advantage served to achieve further economic goals but achieving these was frustrated. (For example such economic operating organ obtains material assistance extended for developing the manufacture of export products, using deceit, which is unable to accomplish the goal and by this it not only uses the advantage without economic justification but also the unjustified use harms the planned character of foreign trade.)

Frustrating the Economic Control

To Paragraph 289.

Controlling the economic activity is one of the important tasks of economic management. The behavior declared to be an offense by Paragraph 289. hinders the fulfillment of this task.

The offense's result is total or partial frustration of economic control. Frustration expresses that the organs doing the controlling could not carry out their task at all or could do so only in part, because the accounting or other records were unavailable or were not available in such a way which would have made the given control possible.

Among the committing behaviors the Proposal emphasizes the systematic failure to keep accounting records as the one occurring the most frequently, but frustration can occur in other ways also.

What has been said in the justification attached to Paragraph 287. for interpreting the concept of legal statute and of orders of an organ authorized to issue legal statutes provide guidance [here also].

Violating the Investment Discipline

To Paragraph 290.

Separate statutes give orders about the order of investments (for example order No 34/1974. (VIII. 6.) MT), and these statutes in part comprise the

penal law's framework fact situation. The statutes which comprise the framework establish numerous responsibilities and prohibitions. Among these, those are relevant to penal law which are connected with the purpose and source of investment.

The behavior which commits the offense is the violation of obligation (violation of responsibility or prohibition). Violation of obligation may occur by using the monetary tools provided by the state differently from the authorized purpose (point a)), or by improper use of [the enterprise's] own funds (point b)).

The consequence of violating the obligation is significant harm to the interest attaching to the order of investments. In the case of point a) the harm to interest may manifest itself in the investment goal not being achieved which should have been achieved with the tools provided by the state. In the case of point b) the harm may manifest itself in undesirable excess purchasing power appearing in the area of investment goods and services as the consequence of this behavior.

Occurrence of harm to such other directions of the national economy's interests serves as foundation for establishing the qualified case, to which the justification to the qualified case of Paragraph 287. refers.

Violating the Financial Discipline

To Paragraph 291.

The Proposal protects the state's credit monopoly with a framework fact

situation. The responsibilities and prohibitions are defined by the statutes concerning the credit system and money circulation (for example order No 37/1967. (X. 12.) Korm.). The behavior which commits the offense is unauthorized extension or acceptance of credit, or use of credit differently from its purpose.

The offense's result is significant harm to interests tied to the order of the credit system of of the circulation of money. The significance of harm to interests generally depends on the credit's extent, duration and type.

What has been said at Paragraph 237. reasonably provide guidance for the qualified case, thus besides the harm to interests which occurred in the orders of credit and money circulation the act can also harmfully affect the national economy in other directions.

Placing a Bad Quality Product Into Circulation

To Paragraph 292.

Important interests attach to observing the requirements concerning product quality both from the viewpoints of further processing and of direct consumption. The Proposal serves the protection of these interests by creating several legal fact situations.

Paragraph 294. and point 9. of Paragraph 137. together provide the concept of bad quality [sic] product, and for the concept of significant quality or value the interpretation develops in judicial practice.

The offense's subject is the employee of the economic operating organ who fulfills that position of leadership which takes the measures concerning sale, etc. The Proposal wishes to avoid the problems deriving from the narrower or broader interpretation of the concept of placing into circulation by giving orders separately about selling and about placing into use.

By regulating the offense's subject and the committing behavior the Proposal expresses that this order is only for those perpetrators who have increased responsibility even otherwise in the economic operation, in contrast with those included in Paragraph 293.

It is a typical case of careless commission when the person taking the measures fails to apply sufficient circumspection, and therefore he is not clear about the product's quality. If the failure can be blamed on the person with emphasized responsibility, holding out the prospect of penal law sanctions is also justified.

To Paragraph 293.

The orders of Paragraph 293. differ from the orders of Paragraph 292. with respect to the subject and to the object. The subject of this offense is the person who is given responsibilities by the rules which concern the establishment of the product's quality; thus not only that worker can accomplish this offense who fills a leadership position [job]. And its object is not the bad quality product defined according to Paragraph 294., but all product the

qualification of which does not correspond to reality. Intentional violation of obligations concerning the establishment of the product's quality becomes an offense if it makes it possible to sell, place into use or put into circulation significant amounts or value of products. These latter elements of the offense agree with the fact situation elements contained in Paragraph 292.

To Paragraph 294.

In determining the product's bad quality the Proposal differentiates between products governed by national standards, ones for foreign trade and other products. The significant disadvantage written in section (2) and significant extent of decrease in usefulness written in section (3) are such relative concepts which depend on the product's character and on those specific economic conditions under which the product is placed into circulation or is used.

If in examining the product's quality only representative examination can be performed due to the product's nature, the result of the method of examination suggested in the standard, in the profession's custom provide guidance for determining the quality. As a consequence of this, if the value of the sample taken does not correspond to the value defined in the standard, in the profession's custom, the representative examination's result can be taken into consideration during the course of proving violation of the rules concerning the determination of the product's quality and also when completing the document which witnesses the quality.

False Witnessing of Quality

To Paragraph 295.

In order to protect the consumers' interests numerous numerous statutes give orders about witnessing quality. From the viewpoint of penal law protection not all types of data of witnessing quality receive protection, only those data which are significant from the viewpoint of the product's quality. Such significant data are for example that information which can be taken into consideration in the interpretation included in Paragraph 294. or in the method of commission written in Paragraph 293.

The concepts of significant quantity and value must be defined in harmony with Paragraph 292. section (1).

False Product Marking

To Paragraph 296.

False product marking misleads the consumers about the product's origin, and in the significant portion of cases it also severely harms their interests by this. This act also endangers the purity of economic life.

By marking — in accordance with the protected legal object — the trade marks, brand marks, identification of the merchandise's producer must be understood among other things. The quality sign can be included under the concept of marking if it expresses not simply a listing under a class but

expresses the product's character of being a brand item, and its protected quality.

The offense's subject can be the person placing it into circulation as well as the person who takes measures for placing it into circulation.

The commission's object is significant amount of product. Application of punishment is not justified for individual false marking of product of significant value.

This offense can be determined if the act does not qualify as a more severe offense (for example fraud or the qualified case of placing bad quality product into circulation).

Unauthorized Foreign Trade Activity

To Paragraph 297.

By declaring unauthorized foreign trade activity an offense, the Proposal protects the state's foreign trade monopoly.

The penal order contained in Paragraph 297. is a framework statute, and the framework is filled by the legal statutes which are in effect concerning the foreign trade (law No III. of the year 1974., order No 7/1974. (X. 17.) KdM [Ministry of Foreign Trade]), which define who is authorized and what is to be understood under foreign trade activity.

The behavior defined in section (1) is a nonmaterial offense, thus the legal fact situation does not contain result.

Establishment of the qualified case can take place if besides harm to the foreign trade monopoly the unauthorized foreign trade activity was also otherwise disadvantageous to the national economy.

Foreign Trade Activity Without Permit

To Paragraph 298.

The subject of this offense can be only someone authorized to conduct foreign trade activity. Someone not authorized to conduct foreign trade activity or exceeding the right's limits does not commit this offense but accomplishes unauthorized foreign trade activity.

The enterprises authorized to conduct foreign trade activity may carry out certain defined economic activities during the course of taking care of their tasks only on the basis of separate permits. (Such permits are for example the import permit connected to bringing in merchandise, the export permit connected with exporting, the negotiation permits, etc.). Economic activity conducted without such permits qualifies as foreign trade activity without permit.

By this legal fact situation the Proposal protects the foreign trade permit system, if the interests of foreign trade suffer harm.

Title II

Offenses Injuring the Order of Economic Operation

The Proposal lists those offenses among offenses harmful to the order of economic operation which harm the order of production and consumption in such a way that economically unjustified profiteering, obtaining income without work or which is not in proportion with the work, causing individual or group economic interests to prevail against the overall society's interests are characteristic for the acts. Generally the speculation and price gauging are characterized by economically unjustified profiteering efforts, and this can also be recognized in endangerment of the public's supply.

The Proposal makes no distinction according to whether the offense is committed in an individual's or an economic operating organization's interests, that is, a group's interest. Economically unjustified profiteering is prohibited activity in the interest of a group also.

Price gauging and endangerment of the public supply can also be accomplished by carelessness. The careless offense usually materializes when the perpetrator errs blameably in the existence or content of a management rule which fills out the penal law frameworks.

Speculation

To Paragraph 299.

1. Speculation harms the production and distribution system established by

the economic management rules. The economic management requirements, statutes define who is authorized to conduct trade activity and to enter into ventures. By conducting trade activity without authorization or by maintaining a venture, the speculator usually desires to obtain income without work or not in proportion with work. If the unauthorized activity is committed in the interest of an economic operating organization, the economic management statutes are violated in the group's interest.

The criteria of conducting trade activity as a concept have developed in the economic life, and these criteria provide guidance for applying the penal statutes also. Conducting trade activity is tied to the appropriate license, which at the same time also defines the activity's limits. Activity without the license or differing from the license qualifies as unauthorized.

From the viewpoint of this offense, organizing activity connected to the production of goods and services of economic character must be considered to be ventures. In the production of merchandise the venture manifests itself primarily in using outside manpower, in organizing the work, next to which the perpetrator's own producing activity is relegated into the background.

Obtaining economically unjustified income is characteristic also of unauthorized undertakings committed in the interest of an economic operating organization. Organizing activity connected to service of economic character is for example the brokerage of manpower.

The venture qualifies as unauthorized if it is tied to license but is

performed without a license, or if the license's restrictions are exceeded, or if license cannot be issued at all for the given activity. If license cannot be issued because it is unnecessary, thus the activity does not call for regulation by management, the venture does not qualify as unauthorized.

2. Merchandise are all those movable and immovable [real estate] objects which has been placed into trade circulation or has been intended for it, assuming that it can be the object of trade circulation at all. The concept of merchandise includes the service defined in Paragraph 315. also.

Economic justification of being intermediary in trade is relative, it is always determined by the economic conditions which concern the given merchandise whether intermediating in trade was worth it. In the interest of making the regulation complete, point b) contains the second formation which is a supplementary order and provides the foundation for punishing all types of speculation. It can be applied if the behavior cannot be included under the previous formations.

3. Paragraph 137. points 6. and 7. determine the concepts of doing it as a business and of criminal association, and the judicial practice establishes the guide amounts for significant quantity or value.

In each qualified case the Proposal includes the basic cases of speculation and violation of foreign currency management, and speculation and smuggling or receiving smuggled goods into legal unities. Holding out the prospect of

more severe punishment than the possibility afforded by the agglomeration rules is justified by the act's increased dangerousness to society.

If the speculation is camouflaged by the economic operating organization's operating according to the rules, not only the interests affected by the basic case suffer harm. At such time the opportunities, advantages provided by the economic operating organization are also used for activity which is harmful to society, and by this the given organization's regular economic connections are also disturbed. Therefore holding out the prospect of more severe punishment is justified.

When interpreting the causing of disadvantage to the national economy as written in section (3), one must start out from the point that during the course of speculation usually some actually existing economic need is being satisfied in an unpermitted manner. If the activity's method is contrary to the law, the behavior is to be evaluated within the frameworks of sections (1) and (2). Establishment of section (3) may take place if the speculation also has harmful economic consequences (for example it takes away a significant market from the authorized economic activity or interferes in the given area the work of those who conduct authorized economic operations).

4. Speculation can be established also when the speculator perhaps did not endeavor to gain material profit or did not achieve material profit. But the majority of cases shows that there is an effort behind speculation to obtain profit.

To Paragraph 300.

The National Savings Bank [OTP] handles the citizens' money loan matters within the framework of the planned economy. The planned character of its activity is connected with insuring the balance of merchandise and monetary conditions. Lending money as a business, besides often covering usurious contracts and thus it is the source of income without work, also endangers the planned character of lending money. Therefore the Protocol deems it necessary that such acts be punishable.

Price Gouging

To Paragraph 301.

1. The system of producers' and consumer prices, the mechanism of developing, regulating and putting into effect the prices are incentives for production and tools for distributing the national income. The price gouging acts injure the price level, disturb the price ratios.

2. What has been said at speculation provides guidance for the concept of merchandise.

The Protocol lists the committing behaviors in two points. In the case of point a) the official price or that mandatorily specified for the seller is exceeded. Statute determines (resolution No 1022/1973. (VI. 27.) Mt [Council of Ministers]) the guide principles for establishing indecent profit written in point b). But the interpretive order of Paragraph 302. is valid for both formations of point b).

The committing behavior of "maintains" expresses that if the price calculation's factors have changed in the meanwhile, continued enforcement of the originally correctly calculated price is also a behavior to be punished, considering the price change.

3. Paragraph 137. points 6. and 7. define the concepts of doing it as business and criminal association. Such commission's increased dangerousness to society justifies holding out the prospect of more severe punishment. Specifying a more severe penalty item is also justified if the price gouging is committed involving a significant quantity of merchandise. Instead of significant value the Proposal considers the endeavor to achieve significant size of profit to be subject to more severe punishment, because if the price of significant value of merchandise is increased to only a small extent, the act's dangerousness to society can be considered also within the limits of the basic case.

Establishment of disadvantage to the national economy written in section (3) can take place when the price gouging interfered with the function of the prices providing incentive for production by also affecting the production, or if it affects the distribution of national income, development of the standard of living in connection with not the individual persons but on the scale of society. Among other things, disturbing the function of providing incentive for production can occur if the price gouging harmfully influences the manufacture of some products which are significant for the national economy, or if it makes a large size investment disproportionately more costly.

The standard of living can be harmfully affected on the scale of society by for example increasing the price of a group of some basic items needed by the public.

To Paragraph 302.

Indecent profit is such conceptual element of price gouging which can have different contents depending on the area of economic activity, development of the economy, types of products. The Proposal desires to limit the concept's explanation only to the extent that if there is an official guide price for the merchandise, exceeding this guide price is also an indispensable condition for determining the offense.

The interpretive rule in section (2) makes it unambiguous that listing the merchandise in a higher quality category than its actual quality, and selling it at a price corresponding to this [higher quality] accomplishes not some other offense (for example fraud) but price gouging.

Endangering the Public's Supply

To Paragraph 303.

Endangering the public's supply is closely connected with smooth operation of the economy. Supplying the public with generally needed items, using and distributing the consumer goods according to society's interests usually does not require intervention by the penal law in case the economy is operating in a

normal manner. Extraordinary circumstances (for example severe natural calamity) may develop a situation in which supplying the public can be insured in certain areas or in connection with certain items only with severe restrictions. If stock management, acquisition or circulation of products must be regulated in the interest of uninterrupted supply to the public, then violation of such rule calls for punishment by penal law in case the interest of public supply is harmed.

According to the Proposal, harm to the public supply's interests is an indispensable condition for establishing the offense. This harm is caused by violating the prohibition written in the statute, or of the requirements of regular economic operation or of purchase according to need. The rules for regular economic operation and the requirement of purchase according to need develop according to the extraordinary circumstances. Usually the rules and requirements are known publicly, but these can be brought to the population's knowledge also by means of local announcements.

Title III.

Counterfeiting Money and Stamps

Counterfeiting money harms the interests of socialist money management and the order of money circulation, attacks the confidence placed into the money issued by the state, and in the case of counterfeiting large quantity or value of money it may also endanger the balance of monetary tools in circulation and the merchandise base.

Counterfeiting stamps primarily decreases the state's money income, because the state derives monetary means from prescribing the mandatory use of postal, dues and other stamps. Besides this, collecting postage stamps and their circulation serving the purpose of collection are activities spread in such broad circles that disturbing them by counterfeiting must be struck by penal law punishment.

The behaviors which commit counterfeiting of money and of stamps are similar to such extent that it is justified to include them in the same title.

Counterfeiting Money

To Paragraph 304.

The object of counterfeiting money is the money in circulation. The concept of money is defined by statute, imitating and counterfeiting by Paragraph 305. Money produced by means of imitation is false money, and the product of counterfeiting is counterfeit money. The Proposal wants to punish not the act of imitating itself, or counterfeiting, but placing imitation or counterfeit money into circulation, or the behaviors the goal of which is to place these into circulation. In accordance with this points a) and b) of the legal fact situation are goal-oriented offenses.

The committing behavior written in point b) ("obtains") reasonably also includes the acceptance of false or counterfeit money. And bringing it into the country as activity of commission is unnecessary to be mentioned separately

because it is necessarily preceded by either obtaining or imitating, or counterfeiting.

Placing into circulation, as a goal is an independent fact situation element of the individual committing behaviors. This is why obtaining money which was originally imitated or counterfeited not for such purpose, for the purpose of placing it into circulation is subject to punishment. Not only paying or transferring money, giving it as gift must be understood under placing into circulation, but all such ways of making it available as the result of which someone else can use the money.

Considering its increased dangerousness to society, commission in criminal association qualifies more severely. Committing the offense involving large quantity or value also qualifies more severely, and committing it involving a not significant amount or value qualifies more lightly. Counterfeiting money is subject to lighter punishment also if its object is change.

The extraordinary dangerousness of counterfeiting money to society justifies that the act of preparation be threatened with punishment.

Confiscation of property is in order in all cases of counterfeiting money, thus also in the ones qualifying more mildly.

To Paragraph 305.

The product of imitating is false money. False money creates the appearance

of real money in circulation. Renewing the alloy [sic -- design?] of money taken out of circulation due to wear also qualifies as imitation.

The product of counterfeiting is counterfeit money. It is typical that due to counterfeiting ["falsification"] the money appears to have higher value, the internal value of money coins made of noble metal decreases [sic - ??].

Issuing Counterfeit Money [Spending]

To Paragraph 306.

There are two conditions for establishing the privileged case regulated as issuing counterfeit money: on the one hand obtaining the money legally, and on the other obtaining it as real or noncounterfeit. That "damage" which the issuer of counterfeit money endeavors to avoid is generated in case these two conditions exist together. The endeavor to avoid damage justifies the more lenient penalty item.

Placing into circulation as the committing behavior agrees with that of counterfeiting money. The qualified case corresponds to what is contained in Paragraph 304. section (2) point b).

Stamp Counterfeiting

To Paragraph 307.

Statute defines the concept of stamp. The concept of placing into circulation expands by that much compared to counterfeiting money (Paragraph 304. section

(1) point c)) that placing into circulation for the purpose of stamp collecting must also be understood by it (Paragraph 308.). In stamp counterfeiting, besides placing into circulation, using [the stamp] is also a committing behavior, and besides the purpose of placing into circulation the purpose of using it is also relevant.

Similarly to counterfeiting money, in this offense the product of imitation is a false stamp. The false stamp creates the appearance of a real stamp. The product of falsification is the falsified stamp, and falsification also expands with the special meaning in accordance with Paragraph 308. What has been said at the falsification of money provides guidance for obtaining as the committing behavior.

Use means applying the stamp according to its designated purpose. Usually the stamp's application according to its designated purpose is one-time use, and the stamp becomes used by this. Additional use of a stamp serving one-time use — corresponding to its original purpose — is a behavior subject to punishment.

The qualified and the privileged cases — with the reasonable differences — correspond to such cases of money falsification (Paragraph 304. secs. (2) and (3)).

To Paragraph 308.

Use of stamps according to their designated purpose usually means one-time

use. But another, very widely spread method of using stamps has also developed, that of collecting stamps. During the course of collecting the stamp may at times have prices far exceeding its nominal value. The Proposal also provides protection for this secondary use, concept. Legal expansion of the concepts of placing into use and counterfeiting serves this protection.

Title IV.

Financial Offenses

The Proposal includes the financial offenses in penal law framework fact situations. The statutes which fill the frameworks define those concepts which refer to the protected legal objects, and those obligations and prohibitions which may be significant from the viewpoint of the behaviors which commit the offense.

Violation of Foreign Currency Management

To Paragraph 309.

1. In protecting the planned management of foreign currency, the Proposal refers to obligations and prohibitions defined in other statutes. The behavior which commits the offense always depend on what obligations and prohibitions are specified in the other statute which fills the penal law's framework. In case of violating or eluding the obligations and prohibitions defined in the statute concerning planned foreign currency management, the harm to interests

may also vary within the value limits. The extent of harm to interest can be taken into consideration in evaluating the concrete act's dangerousness to society.

2. Paragraph 137. points 6. and 7. define the concepts of committing as business and criminal association. The necessity for increased protection of museum-type objects justifies that an offense connected with these be qualified as felony regardless of value.

If the act is committed as business or in criminal association, involving significant or particularly large value, the Proposal expresses the commission's increased dangerousness to society by creating the more severely qualifying cases.

3. In case of careless commission, the harm to interests exceeding the significant value can be taken into consideration during the course of establishing the penalty.

Tax Cheating

To Paragraph 310.

Statute defines the concept of tax. The Proposal orders those forms of intentionally decreasing the tax to be punished which are carried out in connection with the types of taxes written in the definition of tax.

The act of commission may manifest itself in active behavior (for example in

reporting incorrect data, false bookkeeping serving the purposes of decreasing the tax) or in failure to carry out some obligation (for example concealing or keeping in secret some data significant from the viewpoint of establishing the tax, failure to fulfill the bookkeeping obligation, leaving some data out of the books). Obtaining tax-free status or tax benefits by misleading the authorities can be included under the third formation of committing behavior. Other statutes which fill the penal law's framework fact situation establish the obligation to pay tax and the procedure connected with establishing this, the facts and data which are significant from the viewpoint of determining the tax obligation, tax-free status, tax benefits.

Decreasing the tax revenue is the result of the offense included in the legal fact situation, without the result occurring the act remains in the state of attempt.

Abuse of Production Tax

To Paragraph 311.

The Proposal protects with a separate rule the interests connected to the production, reporting and circulation according to statute of products which form the object of production tax.

Deceptive activity is not necessary to accomplish the offense. The first two formations of the committing behavior (producing and concealing) are accomplished by violating the orders of rules which fill the penal law's frameworks.

The third formation of the committing behavior contains receiving products which form the object of production tax.

Smuggling and Profiteering from Customs Duty Violation

To Paragraph 312.

The penal law insures protection of interests attached to fulfilling the obligations written in the customs statutes by a framework fact situation. The customs statutes define the concept of customs goods as well as all those circumstances which influence the payment or freedom from having to pay customs duty, the amount of customs duty to be paid, granting the permit needed for customs handling, etc. The customs statutes also define which authorities have the right to perform customs inspections, before whom the customs declarations are made, as well as the method of making the customs declaration.

The behavior which commits the offense of receiving smuggled items is identical with the behavior which commits the offense of receiving stolen goods. And the qualified cases are identical with those contained in Paragraph 309, section (2) and in section (3) point b).

Check Abuse

To Paragraph 313.

The statutes concerning the order of money management define when a check can be used as instrument of payment. The penal law serves the protection of the

order of making payments defined in these statutes by ordering that issuing an uncovered check or placing such into circulation be punished even if a more serious offense did not occur. The penal law insures the protection by a framework fact situation because other statutes give orders about the conditions of issuing and placing into circulation.

Title V.

Miscellaneous Regulations

Paragraph 314. makes the rule written in Paragraph 77. sections (3) and (4) concrete for economic offenses, while Paragraph 315. interprets the concepts merchandise and price which are significant from the viewpoint of applying this Chapter.

To Paragraph 314.

In case of committing the economic offenses described in Paragraph 314. section (1) confiscation takes place if the item is the perpetrator's property. Section (2) provides the opportunity for confiscating those items which are not the perpetrator's property, assuming that the owner knew in advance about committing the offense. These orders reasonably also include that rule that confiscation of items owned by the state's organs or by cooperatives cannot take place because the offense's perpetrator can only be a natural person, and only a natural person can have knowledge of committing the offense.

In the cases of smuggling and receiving smuggled goods the Proposal -- with

just one single exception -- considers it unnecessary to prove whose property the offense's object is. Customs offenses are also being committed involving such merchandise of foreign origin of which even the owner cannot be found out with the necessary certainty, therefore the Proposal excludes the confiscation of only those items owned by the state organs and cooperatives.

The general rules concerning confiscation require the obligation to pay the value of the object subject to confiscation for that case when the confiscation cannot be ordered or carried out, but otherwise the confiscation is mandatory.

By section (4) the Proposal insures the opportunity for the court to weigh the specific circumstances. Confiscating for example such a built in component part would mean unfair disadvantage which would prevent the usefulness of the entire structure, or confiscation of such an item which besides the circulation value also has so-called sentimental value.

Interpretive Regulation

To Paragraph 315.

As applied in this Chapter, the Proposal includes all such services of industrial or other economic character under the concept of merchandise by legal interpretation which has economic value, for example freight, repairs, rental of apartment and space, or cultural services provided in exchange for systematic compensation. The concept of service extends over performing physical and intellectual work of economic character.

Under the legal interpretation of the concept of price the Proposal also includes countercompensation for property value. Thus the countervalue of merchandise (service) besides money can also be valuable paper, exchange item, performance of work or other service which has property value.

Chapter XVIII.

Crimes Against Property

1. The basis of the socialist state's economic activity is social ownership. The decisive majority of the means of production is owned by the state or by cooperatives as social property. The citizens' goods which serve to satisfy their personal and family needs are in personal ownership. Means of production — within a defined circle — may also be in private ownership. According to the Constitution's orders the Hungarian People's Republic protects all forms of social ownership, personal ownership and also recognizes private ownership. The penal law's regulations also receive an important role in protecting ownership.

For the most part the rules of Chapter XVIII. provide protection against various attacks on ownership rights, but within this they also order that attacks on other property rights be punished.

2. In general the Proposal provides uniform penal law protection for the various forms of ownership. It can be valued as aggravating circumstance in meting out the penalty if the act caused harm to social property. The reason

for this is the significance of social ownership outlined in the previous point.

It is justified to make exceptions from the principle of uniform protection of the forms of ownership in the cases of negligent management (Paragraph 320.) and careless damaging (Paragraph 324. sec. (6)) by limiting the penal law responsibility to acts which damage social property.

3. The Proposal attributes such significance to damage caused by an offense against property or to that value against which the offense was committed which influences the qualification of certain offenses against property and which is the basis for declaring the act to be a rulebreaking. Within the offenses the Proposal differentiates among value and damage sums which affect qualification with the designations of minor, larger, significant and particularly large damage (value), the designation of minor value or damage serves to differentiate misdemeanors from felonies. The Proposal attributes significance to value and to damage also in connection with the other circumstances which qualify the offense.

The Proposal does not define the amounts of value and damage which affect the qualification. This depends on numerous circumstances. For the purpose of avoiding possible frequent changes, it is better if not the Penal Code contains this.

4. Value — from the penal law's viewpoint — means the circulation value of

that thing existing at the time of commission and expressed in terms of money, with respect to which the offense was committed. The circulation value must be established on the basis of retail price even if the offense was committed with respect to the damage of a processing, manufacturing, warehousing or wholesale enterprise. If the thing has no retail price, the value in commission must be established by taking all circumstances into consideration.

The interpretive order of the Proposal's Paragraph 333. point 2. defines the concept of damage. As applied in this Chapter, damage is: the decrease in value caused in the property by the offense.

The civil law defines the concept of damage more broadly. According to Ptk. Paragraph 355. section (4), as reimbursement for damage the value decrease which occurred in the injured party's property due to the circumstance which caused the damage and the lost advantage [profit] must be reimbursed, as well as that replacement for damage or cost which is necessary to decrease or eliminate the property and nonproperty disadvantage [loss] suffered by the injured party.

The difference between the civil law and penal law concepts of damage is justified by the fact that the purpose of the civil law regulations is to reimburse the injured party's damage, while in the penal law the damage caused is a determination of the offense's dangerousness to society. And from this viewpoint the value decrease caused in property has significance.

The damage can be expressed in terms of money, it can be determined as a sum.

If the damage occurred not in money but in something else, the thing's circulation value must be taken into consideration when determining the damage. What has been written about determining value provides guidance for determining circulation value.

Theft

To Paragraph 316.

1. The fact situation of theft protects the existing ownership condition, and through it the rights of ownership.

The object of commission in theft is an item. The Proposal does not define the concept of item with general validity. According to the rules of civil law all items which can be taken into possession are objects of the property rights (Ptk. Paragraph 94. sec. (1)). But only such item can be the object of theft which has property value. This appears from the fact that the legal qualification of theft is determined by the taken [stolen] item's value. From the behavior which commits the theft follows that its object of commission can only be a [re]movable item.

Since not only those items can have property value which can be taken into possession, the Proposal's Paragraph 333. point 1. also includes the electrical and other economically usable energies under the concept of thing [item]. Thus the use of such energy without the right to do so is theft.

The document can also be included under the general concept of item. Taking

it into consideration that only items of property value can be the objects of commission of theft -- and of other offenses against property --, according to the interpretive order of Paragraph 333. point 1. such document embodying property rights is to be considered an item as applied in this Chapter, which in itself insures the authority over property value or entitlement [right] witnessed in it. The Proposal's Paragraphs 273. through 276. define the fact situations of offenses committed in connection with other documents.

Thus, theft's object of commission can be for example a valuable paper which is negotiable upon presentation, the savings booklet negotiable upon presentation. But the so-called reserved savings booklet made out about a savings deposit placed somewhere by reserving the right of disposal does not qualify as item and therefore cannot be the object of theft's commission, because it by itself does not insure the right of disposal over the value represented in it.

From the conceptual definition of thing follows that non-property rights, licenses cannot be objects of commission in theft.

2. Using the expression of foreign object has dual meaning. On the one hand it expresses that the object is not the perpetrator's property, on the other hand that it belongs to a definite natural or legal person. An item left unguarded, thrown in the trash by mistake, and in general one which has gotten unintentionally out of its owner's controlling sphere is not unowned and thus can be the object of theft if practically the possibility has not ceased to exist

that the person with rights to it may again take it into his possession. The same way an item forgotten in an office or other building or room open to the public, and further, on [in] the equipment of a transportation enterprise in public traffic or a freight enterprise is not unowned, ownerless item. That is, the finder does not acquire ownership rights to an item "found" in these places (Ptk. Paragraph 129. sec. (2)). A household animal which has wandered away, transportation equipment left without guard, or item "found" in the enterprise's (plant, factory) dressing room are also not unowned.

The item which is in part owned by the perpetrator is joint property, thus not a foreign object. But an item belonging to the spouse's separate property is a foreign object from the other spouse's viewpoint.

3. The act which commits the action [offense] is taking it away. Taking away is obtaining actual control over the item. Thus taking it away does not necessarily mean transporting, carrying away the item.

4. Theft is a purpose-oriented act: taking the item away is done for the purpose of illegal misappropriation. The misappropriation is illegal if the taking away is not permitted either by statute or the person who has the right to do so. Thus for example the damaged party has the right to hold back the animal found in a prohibited area.

5. The taken item's value has definitive significance from the viewpoint of qualifying the theft. Other qualifying circumstances call for the next more severe penalty item than the one defined on the basis of value.

With respect to these qualifying circumstances the Proposal took two viewpoints into consideration in making the regulations. On the one hand it endeavored to avoid excessive detailing of cases in offenses against property also. Therefore it endeavored to designate the qualifying circumstances with more comprehensive names, and on the other hand to value only such circumstances as qualifying circumstances which really increases the degree of the offense's dangerousness to society, and does so at the extent corresponding to the defined penalty item.

From this goal of the Proposal follows that it omitted from the qualifying circumstances those qualifying circumstances defined in the law now in effect which do not increase the degree of the act's dangerousness to society in the extent described above, thus those cannot be included under the qualifying circumstances designated by the use of more comprehensive wording. That is, in the contrary case that effort would not be realized that excessive detailing should be avoidable — in creating laws as well as in applying them. The qualifying circumstances thus omitted can be valued as aggravating circumstances in the given penalty framework.

6. In accordance with the organizing principle now introduced the Proposal defines the following qualifying circumstances in connection with theft:

a) Commission in criminal association, at the scene of public danger, as a business, as well as using violence against property are qualifying circumstances connected to all values of commission.

a/1. The Proposal defines the concept of criminal association in Paragraph 137. point 6.

a/2. Public danger exists if as a consequence of the destructive effect of some material or energy one or more unspecified persons or a larger number of specific persons or items of significant value are endangered. Thus the act committed at the scene of a strike by the elements (flood, earthquake) or other unusual event (explosion, fire) qualifies as committed at the scene of public danger.

a/3. Commission as business is interpreted by Paragraph 137 (its point 7.). Using this circumstance as a general qualifying circumstance is justified by the fact that in acts against property, obtaining profit as the typical motivation not only characterizes the perpetrator but it is also suitable for expressing the actual degree of the committed act's dangerousness to society. That is, acts performed as business form a unity and thus through this qualification it can be insured that the court will apply the higher penalty item for theft carried out as business.

a/4. As was already mentioned above, the Proposal collects such circumstances as qualified case by a more comprehensive name which increase the act's dangerousness to society. Thus committing theft by violence against property includes entering into a room or enclosed area belonging to it using violence, and also breaking open a lock or equipment serving its safekeeping.

b) Besides the value limits the Proposal also attributes to other circumstances the effect of increasing the dangerousness to society. In order to qualify those acts as misdemeanors which were committed for value not exceeding the value limit of rulebreaking, the Proposal — besides the qualifying circumstances introduced in the previous point — considers the following circumstances:

b/1. Special repeat offender — according to the definitions given in Paragraph 137. point 13. and in Paragraph 333. point 4. — is that perpetrator who was sentenced with legal finality to administered loss of freedom for theft or for other offense against property before committing the new act, and five years have not yet passed since serving the punishment or since the end of its administrability. According to the orders concerning special repeat offenders (Paragraph 97.) — in the absence of orders to the contrary — the upper limit of the new offense's penalty item can be increased by half, but cannot exceed fifteen years. Due to this order, special repeat offendership as qualifying circumstance generally does not appear in the Special Part.

The situation is different regarding the now discussed misdemeanor of theft. That is, in this case the newly committed theft — with respect to the value involved — would be only a rulebreaking. The circumstance that the perpetrator has already previously been sentenced to administered loss of freedom for offense against property and that the other conditions of being a special repeat offender defined by law also exist, results in the new act qualifying

as offense, the misdemeanor theft committed as special repeat offender. Since special repeat offendership is valued as a circumstance which qualifies the rulebreaking as offense, it cannot be valued again as the circumstance which increases the penalty item of this misdemeanor according to Paragraph 97.

b/2. Since according to what has been described above, the violence against property includes violent entrance into the room or enclosed area belonging to it and breaking open the lock or equipment serving its safekeeping, that case must also be designated as qualifying circumstance when the perpetrator enters into the room or enclosed area belonging to it by deceit or without the knowledge and agreement of the person authorized to use it (user) (sneaking in).

For example it qualifies as deceptive behavior if the perpetrator asks a small child for the apartment key in order to be able to steal by entering the apartment, because the child cannot comprehend what consequences may follow if the key is handed over.

According to the Proposal's viewpoint, that circumstance that the perpetrator gets into the apartment not with the knowledge and agreement of the person who controls the apartment -- assuming that this took place for the purpose of committing theft -- increases the degree of the act's dangerousness to society to such degree which justifies judging it not as rulebreaking but as misdemeanor.

b/3. The following deserve mentioning in connection with the other qualifying circumstances included in section (2).

Opening with a false key can be established if the perpetrator uses some implement to open the lock or equipment serving the safekeeping which is generally not used for that purpose, for example a fake key, bent nail, steel rod or such key which was not made for the lock opened with it but per chance it is suitable or through modification it has become suitable to open the lock. That key is stolen which the person not authorized to do so takes into his possession for the purpose of committing the offense. Theft committed with the use of a key taken from its known hiding place also qualifies as commission with a stolen key.

b/4. For those residing together in a jointly used apartment the foreign property items in the apartment are more easily available; this makes it easier, provides the favorable opportunity to commit theft. This circumstance justifies judging theft more severely when it is committed in the apartment, to the injury of a person jointly using the apartment. Residing together is living together for a longer length of time or with permanent character. Living together for a short time, resulting from hospitality or from a favor does not yet establish the foundations for this qualification. But if joint use of the apartment is done with the intention of permanency or of lasting living together, this qualifying circumstance must be applied regardless of the actual length of time of living, being together. Theft committed by one of the co-renters to the injury of another co-renter by taking advantage of the situation resulting from the joint rental, as well as theft committed in workers' quarters to the injury of a fellow resident fall under this qualification.

Besides the apartment there are also other such rooms which serve for people to be in, and which identical persons use jointly — also with permanent or lasting character. The difficulty of self-protection, in a certain sense the being so vulnerable justifies that thefts committed by taking advantage of this situation should also fall under more severe judging. Jointly used rooms are the rooms of a common place of work, common dressing [locker] room, work hall. The concept of common place of work — from the viewpoint of qualification — means that area where the workers belonging to the same economic unit can rightfully stay during the course of performing their work. Thus geographically differing work places of the same enterprise are not common places of work. Doing work with purely occasional character at the same place of work also does not establish the foundations for this qualification. But it is immaterial whether the perpetrator works at the common place of work as a worker in an employment relationship (employee), or as member of the cooperative, or in any other capacity.

With respect to the sick being treated there, the hospital room is a jointly used room.

7. In recent decades the abuse committed with museum-type values has become an offense-category of international character. These offenses are causing very large damage to the nation's properties. Irreplaceable public collection items, art treasures are destroyed or go abroad without permit. This is why increased protection of museum-type values is justified. The Proposal insures

this increased protection by regulating the offenses committed for such objects as qualified cases.

Theft committed for a museum-type object is always felony and is to be punished by loss of freedom ranging to at least three years. But if the value of the museum-type object is significant or particularly large, the theft must be qualified according to the value of commission. The concept of museum-type object is defined in legal statute No 6. of the year 1975 and order No 2/1965. (I. 8.) MM [Minister/Ministry of Culture].

Embezzlement

To Paragraph 317.

1. Beyond the fact situation elements which are identical with theft, the following deserve attention concerning the fact situation of embezzlement.

The Proposal defines two committing behaviors of embezzlement: misappropriation of something without the rights to it, and treating something as one's own property.

Misappropriating something without the rights to it means actual exercising the rights to which the owner is entitled, possessing and using the item as its owner, and treating the item as its owner.

Embezzlement takes place by treating an item as one's own if the perpetrator at the time exhibits such behavior without permission from the person who has

the right to do so to which only the owner — or another with his permission — is entitled. Thus for example the perpetrator treats the item as his own if he temporarily transfers the item's possession, use to another, places the item with a pawnbroker or encumbers it some other way. In these cases the perpetrator's intention is directed not at permanent appropriation of the item but at temporarily exercising the owner's rights of control.

2. In embezzlement the perpetrator legally comes into possession of the foreign object. Entrusting means giving possession of the item, the reason for which is immaterial, it can be for example for the purpose of safekeeping, treatment, use, transportation. The duration of time for which possession is given is immaterial from the viewpoint of establishing embezzlement, it can take place for a short time also. But handing the item over for the reason of being momentarily occupied is not entrustment. Intentional taking away of such object qualifies as theft.

The connection between the entruster and the perpetrator is also immaterial: it is not necessary that such confidential relationship exist between the two of them which would justify the fact of entrustment. Embezzlement can also be committed on the basis of casual acquaintanceship, with respect to an item entrusted to someone in a situation provided by the circumstances, for example at the railroad station, in a restaurant in connection with an item temporarily entrusted to the perpetrator.

3. With respect to the qualified cases points a/1. through a/3. of point 6. of

the justification attached to Paragraph 316. provide guidance also for embezzlement.

Embezzlement committed for values of rulebreaking magnitude qualifies as misdemeanor partly due to the same circumstances which occur also in the offense of embezzlement as qualifying circumstances.

Point b/1. of point 6. of the justification attached to Paragraph 316. contains the reasons for qualifying according to "special repeat offendership."

Swindle

To Paragraph 318.

1. The fact situation of swindle wishes to provide protection against being able to take advantage of another's error for the purpose of obtaining profit unlawfully. Due to the error the injured party gives such an order that by it he causes damage to someone. Cause-effect connection must exist between the error and the damage.

2. The act which commits the swindle is misleading the person or keeping him misled. Misleading is making something untrue appear as fact, or distorting, altering an actual fact. And keeping someone misled is failure to dispell a misbelief which developed independently of the perpetrator's behavior, or reinforcing the same.

The content of misleading or keeping in misbelief depends on the character of

the topic which serves as the object of the swindle: it can always be determined concretely, based on the data of the given fact situation. It is not necessary that the misleading or keeping in misbelief extend over the entire topic, only that much is necessary that it extend over such an essential circumstance with respect to which the error is in cause-effect relationship with the damage caused.

The injured party's gullibility, carelessness — of which the perpetrator takes advantage in the misleading — is immaterial in establishing guilt in the swindle. The same way the primitive, easily recognizable character of the misleading behavior is also immaterial.

3. Causing damage is a fact situation element of swindle. The Proposal's Paragraph 333. point 2. defines the concept of damage. What is written in the introductory justification of Chapter XVIII. provides guidance for establishing damage.

4. With respect to the qualified cases, what is written in point 6. [sub]-points a/1. through a/3. of the justification attached to Paragraph 316. is to be applied.

In part the same circumstances qualify that swindle which causes damage not exceeding the value limit of rulebreaking to be misdemeanor, as the ones which appear as qualifying circumstances in the offense of swindle.

The reasons of qualifying according to "special repeat offendership" are

contained in in point 6. [sub]point b/1. of the justification attached to Paragraph 316.

Unfaithful Management

To Paragraph 319.

1. Unfaithful management is distinguished from other offenses against property by the fact that there is no misappropriation in its occurrence. That is, in this case swindle would be involved. The essence of unfaithful management is: abuse of the assignment to manage property, which causes damage.

2. Only such person can be the culprit of unfaithful management who has been entrusted to manage someone else's property.

The fact situation element of "violation of the managing obligation" can always be established only on the basis of the given case's fact situation. In this respect difference can be made between property in social and in personal ownership. In case of property in social ownership, activity contrary to the financial regulations and the ones concerning property management, intentional failure to perform such obligation (requirement) constitutes violation of obligation. In case of property in personal ownership the managing obligation is related to the assignment. Assignment can take place by the authorities, for example by the custody authority or by the courts, when the assigned person's -- custodian or caretaker -- managing obligation is determined by statute. In such case violation of obligation can be established on the basis of activity

contrary to the statute, possibly to the authorities' requirements based on this, failure to observe this. In case of assignment based not on the authorities' measures — for example, on long absence — the agreement's content, in absence of this intentional violation of the rules concerning reasonable management can create the foundations for establishing violation of obligation.

The nature of the property item (property items) constituting the property also determines the how [sic] of management [method of management]. Different rules of management are valid for example for real estate (considering also the real estate's character) than for movable property. The basic rule is: avoiding damage, insuring the profit (income) which can be achieved.

3. As is evident from the fact situation, unfaithful management is a material offense: completed unfaithful management can be established only if the act has caused disadvantage to property. The disadvantage must be in cause-effect relationship with the violation of obligation.

Besides decrease of value which incurred to the property, property disadvantage also includes the property advantage which did not occur (Paragraph 137. point 4.).

Designating the result as property disadvantage instead of damage follows from the act's character. That is, the obligation of the person managing the property — corresponding to the requirements of economic life — cannot be limited to such activity which fends off the decrease of value which would

otherwise occur in the property, its profit, income must also be insured, depending on the property's character.

4. The act can be committed by direct as well as by potential intent. The intent must also extend over causing property disadvantage.

5. Regarding the penalty items the Proposal starts out from the consideration that it is justified to differentiate between the acts with respect to value limits, and the same value limits can serve as basis for the differentiation as in theft, embezzlement and swindle. Thus acts causing minor, larger, significant and particularly great property disadvantage must be distinguished here also.

Negligent Management

To Paragraph 320.

1. Protecting the people's property is the constitutional obligation of every citizen. This is an increased responsibility of those who have been assigned to manage or supervise the social property. In the interest of increased protection of social property, the Proposal orders its negligent management to be punished.

2. The object involved in committing negligent management is not some foreign object but foreign property, indeed property in social ownership. Broad protection of this property justifies that the fact situation should punish not

only that perpetrator's behavior who has been assigned to manage the property but also the behavior of the person whose responsibility it is to supervise, control the property's management.

Destruction or damaging of a property item in social ownership qualifies as careless damaging (Paragraph 324. sec. (6)) also when it is committed by the person who has been assigned to manage or supervise the property. But careless damaging of social property is to be punished only in case significant damage is caused.

3. Only that person can be the culprit of negligent management who has been assigned to manage or supervise social property. What is contained in point 2. of the justification attached to Paragraph 319. provides guidance concerning the management of property. The concept of supervision includes control of the property management, directing the property management.

4. Negligent management can be committed only through carelessness. Carelessness can be conscious (*luxuria* [Lat.]) or negligent (*negligentia* [Lat.]).

Whether in the given case unfaithful management committed with possible intent or negligent management carried out with conscious carelessness occurred, can be decided only by means of thorough, detailed discovery and evaluation of all circumstances of commission.

5. The property disadvantage must stand in cause-effect relationship with the violation of obligation. The cause relationship can be determined on the basis

of the given case's circumstances. Cause relationship can be established between the perpetrator's behavior and the property disadvantage if it occurred due to a series of violations of instructions concerning the handling of money, if the retail store's manager on a series of occasions accepted the merchandises delivered to the store without checking the weights and quality; if a demand to which the state is entitled became uncollectible due to failure to effectuate the demand; if in case of inventory shortage various violations of obligations can be established as faults of the perpetrator; etc.

6. According to the Proposal negligent management cannot be established in connection with managing property in personal ownership; the manager answers for damage according to the orders of civil law.

Robbery

To Paragraph 321.

1. Robbery is in part a summarized, in part a complex offense, with three behaviors of committing it.

The Proposal defines the robbery defined in section (1) as an act with two formations. The first formation is theft committed by violence against a person. The behavior which carries out the violence against a person is application of violence or threat. The fact situation of robbery defines the concept of threat more narrowly than the interpretive order of Paragraph 138; only that act — theft — accomplishes robbery which the perpetrator carries

out by applying direct threat against life or bodily integrity. Neither the violence nor the threat has to be directed against the injured party's person, that is, against the person from whom the perpetrator takes away the object, but from the concept of applied violence, from that circumstance characterizing the threat that it must be aimed directly at life or bodily integrity, follows that in general violence applied against a person present, or threat aimed against a person present is involved.

The second formation of section (1) is placing someone in an unconscious state or into a condition of being unable to defend himself. Even though in this formation also the fact situation uses the word "someone" with regard to the injured person, but since in this case of robbery the perpetrator places another person into an unconscious state or one in which he is unable to defend himself in order to take his item away from him, it follows that in the now discussed case of robbery the behavior of commission must be exhibited against the injured party.

2. Application of violence, threat must be purpose-oriented: the perpetrator has to act for the purpose of taking away the foreign object, in other words to carry out the theft. Thus application of violence or threat is an accessory act in the now discussed formation of robbery.

If the perpetrator applies the violence or threat not for the purpose of accomplishing the theft, robbery cannot be established. This is also evident from the fact situation of robbery defined in section (2). That is, in this

case the application of violence or threat occurs after the theft is completed. The thief caught in the act applies it in order to keep the stolen object. The violence or threat is purpose-oriented in this fact situation also, but the perpetrator applies it not in order to complete the theft but in order to keep the item derived from the completed theft. Therefore the violence or threat here is not accessory (advance) but post [supplementary] act of the theft.

3. Violence is exertion of such physical force directly acting upon some person which breaks down the resistance: it excludes prevention of taking away the object. Violence must always be directed against a person. Violence applied against an item is qualified case of theft.

The threat must be aimed directly against life or bodily integrity, and must trigger just as paralyzing effect as violence does. The difference is only that while violence is the result of exerting physical force, threat is holding out the prospect of this same, that is, psychological influencing. Holding out the direct prospect of attack against life or bodily integrity can occur not only against the person possessing the item but also against another person, but the content of threat must be such that it triggers such serious fear in the item's possessor which moves him to hand over the object.

4. In the unconscious state the injured party is unable to exert resistance against taking away the object (for example dazed, sleeping). The perpetrator must cause this condition on purpose — in order to take away the object.

In the Proposal's interpretation difference must be made among the reasons which cause the unconscious state. That is, if it is caused by drunkenness, theft carried out against an injured party who is in such condition qualifies as stripping (Paragraph 322.).

Placing into a condition of being unable to defend one's self can be established if the injured party cannot exert the resistance for physical reasons (for example because the door has been locked on him, his way is being blocked, etc.).

5. Among the qualified cases of robbery Paragraph 137. point 3. defines the concept of committing it with arms, and its point 11. defines commission in group.

Stripping

To Paragraph 322.

1. The Proposal regulates theft committed by getting another person drunk, or by taking advantage of violence or direct threat against life or bodily integrity applied by the perpetrator during the course of committing another offense in an independent fact situation, and calls it stripping.

2. Getting someone drunk means causing the injured party to consume immoderate quantities of alcohol, as a result of which he gets into an intoxicated condition. The injured party himself also contributes by his behavior to getting

[becoming] intoxicated. It is not a condition to establishing that someone was made drunk that the injured party should be in an unconscious drunken state, it can also be established if the perpetrator commits the theft by taking advantage of the not unconscious injured party's intoxication. In case of stripping the perpetrator gets the injured party drunk in order to be able to commit the theft, therefore getting someone drunk is a purpose-oriented act. Stripping does not take place if the perpetrator steals from a person who is intoxicated for another reason.

3. In case of robbery, application of the violence or direct threat against life or bodily integrity occurred for the purpose of theft. If the perpetrator uses violence or threat during the course of committing another offense, this does not occur for the purpose of the theft, therefore robbery cannot be established. Thus if the perpetrator steals from a person who is under the effect of such violence or threat, he answers for stripping because the injured party — due to his condition — is unable to prevent taking the object. Naturally, establishing the stripping does not affect the perpetrator's responsibility for committing another violent offense.

4. Corresponding to the offense's dangerousness to society, the Proposal determines the penalty item of stripping more severely than for theft, but more leniently than for robbery.

Extortion

To Paragraph 23.

1. The fact situation of extortion protects property rights and personal freedom.

Similarly to the fact situations of robbery and stripping, violence and threat are elements of the fact situation of extortion also.

By using violence or threat the perpetrator forces the injured party to do, not do or to endure something. This is the behavior which commits extortion.

2. The perpetrator of extortion forces the injured party to exhibit some behavior connected with property rights. This property right may involve movable or immovable [real estate] items, property demand, cancellation of debt, acceptance of property obligation, etc.

The forcing is done with violence or threat. If the violence is aimed at enduring the taking away of the item or at handing it over, robbery must be found. Paragraph 133. defines the concept of threat. In case of extortion the threat may occur by holding out the prospect of personal or property disadvantage. The threat's directness is not a condition of establishing threat, but it is necessary that it generate serious fear in the threatened party.

3. Extortion is a result-offense: the fact situation is completed when the damage occurs. In case the damage does not occur, the act remains an attempt.

As for all result offenses, the cause relationship between the damage which occurred and the perpetrator's behavior is necessary for extortion also. The damage is: decrease of value caused in the property (Paragraph 333. point 2.). But it is not necessary that the damage occur in the property of that person against whom the violence or threat is applied. The damage can be anyone's, but it must stand in an effect [cause-effect] relationship with the perpetrator's extorting activity.

4. The perpetrator's goal is to illegally obtain profit. That profit is illegal which is contrary to statute, which was achieved by circumventing the statute, or if it is obviously contrary to society's interests or to the requirements of living together in a socialist society. The illegal goal to obtain profit also exists if the perpetrator forces out a demand which cannot be achieved through the courts.

It is not necessary that the perpetrator force the injured party to do, not do or endure something in his own [the perpetrator's] interest. This circumstance does not affect the act's being result-oriented. Extortion must be established also if the perpetrator obtains the illegal profit for someone else. But it follows from the act being result-oriented that only that perpetrator can accomplish culprit's (co-culprit's) activity who takes part in the forcing, in applying the violence or threat for the purpose of obtaining profit illegally.

The word usage of obtaining profit "illegally" distinguishes this activity of

forcing from such behavior carried out for the purpose of obtaining profit "legally". If the perpetrator uses the violence or threat in order to gain effect for his legal property demand or for what he deems legal, the act qualifies as taking the law into one's own hands (Paragraph 273.).

5. The qualifying circumstance defined in section (2) point b) is: committing extortion by using threat against life or bodily integrity or other similarly severe threat. If the threat is aimed directly against life or bodily integrity and the perpetrator forces the injured party to hand over an item or to endure taking it away, robbery takes place. Thus the qualified case of extortion can be established if the threat against life or bodily integrity is not direct, or if it is direct, then if it is not aimed at handing over an item or endure taking it away, but at some other act connected with property rights.

The qualified case defined in section (2) point c) brings up the question of distinguishing between extortion and swindle. That is, this qualified case occurs also if the perpetrator carries out his act by imitating official assignment or quality. Swindle can be established if as a result of deception the injured party acts voluntarily but does not know that he causes damage by this, and extortion when the injured party does, does not do or endures something under the effect of threat, in spite of knowing that he is being damaged by this.

Damaging

To Paragraph 324.

1. The legal object of damaging is property. By this fact situation the Proposal provides protection against such attacks on property rights which annihilate or damage the property item's substance.

By the way, the property item designation includes both the movable and the real estate. Damaging the foreign property item can cause damage only in the case if the property item has value.

2. The committing behavior is damaging or annihilation.

Annihilation means terminating the property item's substance or damaging it to such degree as a consequence of which it can no longer be restored to its original condition.

Damaging means causing such damage to the item's substance due to which its value decreases. Harm to the property item's usability is not a condition of establishing damaging.

3. The item of commission is a foreign property item. Damaging one's own item, or annihilating it does not qualify as damaging, offense against property. From the viewpoint of judging whether the property item is foreign, what has been said in the justification to theft is valid here also.

4. The Proposal punishes the careless formation of damaging if the property

item is society's property and if the damage caused is significant. It is a qualified case if the damaging caused particularly large damage. With respect to careless commission, both acts are misdemeanors.

Illegal Acquisition [Misappropriation]

To Paragraph 32,

1. The full spectrum of protecting property also requires declaring such behaviors to be offenses when the perpetrator takes away another's item not on purpose -- in order to illegally acquire it --: he commits the acquisition only later, on an item which came into his possession not through criminal behavior.

According to Paragraph 1. section (1) of order No 18/1960. (IV. 13.) Korm. concerning the procedure to be followed with respect to found items, the finder is required to turn over the found item within eight days calculated from the finding to the person losing it, to its owner or to another person authorized to receive it, or to turn it in at the local council. Even though the Proposal does not mention the owner and other person authorized to receive it, turning the found item over to such persons excludes illegality.

2. The fact situation considers violation of the obligation to return it to be that behavior dangerous to society which justifies declaring it to be an offense. But the perpetrator can also accomplish the misappropriation within the eight-day deadline: he can express this intention or he can make the

returning impossible by disposing of the item. This is why it became necessary to designate misappropriation as committing behavior. That element of the fact situation that the item got to the perpetrator incidentally indicates a lesser degree of dangerousness to society. This justifies that the penalty item for illegal acquisition should be smaller than those for other acts against property.

3. The offense's object of commission is the found item, foreign item which has gotten to the perpetrator unintentionally or in error. Finding means taking possession of a lost item. The item is lost if it has fallen out of the owner's possession, and if he cannot take possession of the item again, or if it is impossible to gain physical control over the item.

The item is not lost if the owner loses it under such circumstances that he still has a serious opportunity to recover it, such is for example an item forgotten on the equipment of a public traffic transportation and freight enterprise, because the enterprise saves it and returns it to the owner. Otherwise such object comes under the transportation enterprise's sphere of authority. An item lost in an official or other building or room open to the public is also not a lost item.

For the most part, the item gets to the perpetrator unintentionally independently of human behavior. The foreign object gets to the perpetrator in error if this occurred due to that person's error who is authorized to dispose over the possession. Thus for example the organ which makes a payment pays twice, due to an error.

Receiving Stolen [Illegal] Goods

To Paragraph 326.

1. Receiving goods illegally is an accessory act, one of the cases of criminal connection. Regulating it in this Chapter is justified by the fact that it too attacks the property relationships. It is dangerous to society in two respects. On the one hand it provides incentive for committing offenses against property because it aids the perpetrator in selling the stolen, etc. item, and on the other hand the receiver of such goods makes discovery of the offense more difficult by organizing the item [sic — may be typo] derived from the defined offense against property.

2. Receiving goods illegally being an accessory act means that the perpetrator commits his act on an item derived from another offense. The Proposal defines the circle of these offenses (basic acts) in those offenses against property through which the perpetrator can have authority over foreign objects. Such offenses are: theft, embezzlement, swindle, unfaithful management, robbery, stripping, extortion, illegal acquisition and also receiving goods illegally itself.

Receiving goods illegally can be committed on items derived from the basic acts. Not only that item must be understood to be an item derived from the basic act with respect to which the basic act was committed, but all such items which directly or indirectly derive from committing the basic act. That item also derives from the basic act which was processed, reworked after

committing the basic act, and also the countervalue of alienating the item.

3. Listing the basic acts is exhaustive. However, qualifying them from the viewpoint of establishing the receiving of stolen goods is immaterial. This is the consequence of that fact that receiving stolen goods is a criminal association, a behavior connected to an already earlier committed offense. From this follows that the qualified cases of receiving stolen goods are independent: they are not connected to the qualified cases of the basic acts.

Due to the fact situation of receiving stolen goods being independent, if the basic act's perpetrator cannot be punished for some reason, this circumstance does not exclude establishment of receiving stolen goods if the act is according to the fact situation. But if the basic case is not an offense, but for example only a rulebreaking, the act of the receiver of stolen goods also does not qualify as offense, possibly the rulebreaking case of receiving stolen goods occurs.

4. Obtaining is actual taking possession of the item. The form of this can be only a legal transaction, but whether the person committing receiving stolen goods gives any and if so, what kind of countervalue, or what type of counter-service, is immaterial from the viewpoint of establishing the receiving of stolen goods. Thus, receiving stolen goods must be established also if the receiver of stolen goods gives countervalue exceeding the value of the stolen item, for example if the thief commits swindle against the receiver of stolen goods. But that is also receiving stolen goods if the receiver of stolen goods

received the item from the thief as a gift, knowing that it was stolen.

Concealment takes place if the perpetrator obtains the possibility of having control over the item without formally taking possession of the item. Hiding can also be connected to obtaining, for example remodeling, repainting, etc. the stolen item. But in such case the committing behavior is the obtaining.

Cooperation in alienation is: extending aid so that the perpetrator of the basic case be able to sell the item. In such case the receiver [for lack of better word] of stolen goods does not obtain the item. Being a receiver of stolen goods is distinguished from being an accessory after the fact with respect to the object as defined in Paragraph 244. [print says 243., obviously a misprint - Paragraph 243. deals with concealment of saving circumstances, and has no such section and point as referred to here. Translator.] section (1) point c) by the fact that the receiver of stolen goods acts for the purpose of obtaining profit. (And what distinguishes it from being an accessory after the fact committed for the purpose of obtaining profit as defined in Paragraph 244. [see note 6 lines up. Translator.] section (2) is that receiving stolen goods can be committed only on items deriving from the basic acts listed in the fact situation.)

5. Receiving stolen goods is a goal-oriented act: the perpetrator must act for the purpose of obtaining profit. But it is not necessary that he act for his own material profit, it can be in the interest of anyone except the perpetrator of the basic act. If the perpetrator hides the item deriving from

the basic case for and in the interest of the perpetrator of the basic case, or cooperates in insuring the advantage deriving from the basic case, the act qualifies not as receiving stolen goods but as being accessory after the fact.

6. Receiving stolen goods can be accomplished only intentionally. Thus the perpetrator's knowledge must include that the object of commission derives from some offense against property listed in the fact situation. In case the perpetrator does not know but may suspect from the circumstances that the item derives from theft, etc., his act qualifies as rulebreaking.

Arbitrarily Taking a Vehicle

To Paragraph 327.

1. With the spreading of motorization it is more and more frequent that a car, motor vehicle, or other mechanically driven vehicle (for example a work machine) is taken possession of arbitrarily, is used without the right to do so. It makes committing the act easier that placing the vehicles into garages causes difficulty all over the world, therefore they are left on the street. According to the Proposal these circumstances justify increased penal law protection of motor driven vehicles. Therefore, in agreement with the regulations of all modern penal codices the Proposal also declares unauthorized use of a motor driven vehicle to be an offense.

As a consequence of the illegal use the owner, or the vehicle's rightful user are hindered in using it. Thus the act harms or endangers the property

relationships. This is why the Proposal places the arbitrary taking of a vehicle among offenses against property.

2. According to the fact situation, the perpetrator takes the vehicle away for a purpose, in order to illegally use it. Taking it away results in the rightful user not being able to exercise control over the vehicle temporarily, it has been removed temporarily from his control. Thus the activity which commits the deed (the taking away) in this case is identical with that of theft. The two offenses are distinguished from each other by the purpose. In theft acquisition of ownership, in the arbitrary taking of a vehicle the unauthorized use is the purpose.

That person also accomplishes the offense who uses a vehicle without authorization taken by someone else for the purpose of unauthorized use. This occurs for example when the person taking the vehicle lets someone else drive.

But the owner's, the rightful user's unhindered right to control must be protected against that behavior also when the perpetrator uses that vehicle in an unauthorized manner which has been entrusted to him. In this fact situation the taking away is no longer needed because the vehicle is in the perpetrator's possession. This act is similar to embezzlement: the act of committing it is the unauthorized use in this case also, since the purpose of gaining ownership is missing in this behavior also.

From the above things follows that inasmuch as taking the foreign vehicle away is done for the purpose of acquiring ownership, or the person entrusted

with it takes ownership of such vehicle or controls it as his own, theft or embezzlement takes place.

3. Arbitrary taking of a foreign vehicle can be committed only intentionally. From the act's purposeful character, or from the act's character (second formation) follows that by unauthorized use of a foreign vehicle the perpetrator removes it only temporarily from under the authorized person's control. In the fact situation it is therefore unnecessary to include this circumstance. It is the task of the judicial practice to judge with respect to the time duration of use, when can unauthorized misappropriation [taking ownership] be established instead of unauthorized use.

4. Among those qualifying circumstances which in general increase the dangerousness of offenses against property to society, the Proposal — based on practical experience — in case a foreign vehicle is taken arbitrarily, evaluates unauthorized entrance into the room or enclosed area belonging to it, commission in criminal association, and that case when the perpetrator uses violence or direct threat against life or bodily integrity.

Cheating the Customers

To Paragraph 328.

1. The fact situation of cheating the customers serves to protect the consumers against deceptive behaviors which cause them damage.

The fact situation of cheating the customers is similar to that of swindle.

Both fact situations protect property, both are accomplished by deceptive behavior and causing damage is a common element in both.

Creating a separate fact situation is justified by the special circumstances of commission. The circle of perpetrators is limited: the perpetrator is usually a person active in industry, trade or in various areas of services. The circle of injured persons is also limited: the act can be committed to the injury of buyers or those who place orders. The committing behavior is also special: the act can be committed in the area of selling merchandise placed in circulation directly for the consumers and services of economic character, by false weighing, calculation and deceptive activity affecting quality (sections (1) and (2)).

Due to the circumstances of committing it, the act causes damage to many (more than one) persons: each injured person suffers relatively minor amount of damage. Thus it is justified that the act be subject to punishment regardless of the amount of damage caused.

These characteristics of the fact situation justify that causing damage to the customers can be established only if a more severe offense did not occur.

2. The object of commission is directly the merchandise placed into circulation for the consumer, or the service of economic character.

Paragraph 315. defines the concept of merchandise. According to this, industrial or other service of economic character also belongs under the concept of

merchandise. But this concept definition is valid with respect to the economic offenses; thus this object of commission must also be designated in the fact situation of causing damage to the buyers which accomplishes an offense against property.

Placing merchandise into circulation directly for the consumers means sale of the merchandise in state, cooperative or private commerce, at a farmers' market selling place or in the catering industry. Primarily the various retail services must be understood by services of economic character.

On the other hand it is justified to include those merchandises within the circle of protection also which the retail trade etc. places into circulation as prepackaged goods in the original packaging, without changes. The employee of the enterprise producing the merchandise is responsible for criminal acts related to such merchandises -- for example for shorting the weights.

3. The committing activity is the activity which causes damage to the shoppers or to persons who place orders by false weighing, calculation, by making the quality of the merchandise worse, or by behavior corresponding to this during the course of providing services of economic character: by rendering service which is not the appropriate quality. In the majority of cases the committing behavior causes occurrence of damage. But such acts can also be included in conducting damaging behavior which for example due to the consumer's alertness only reached the stage of attempt. Establishing the conducting of such activity cannot be tied exclusively either to time duration or to the number of buyers

or order placers. In general the perpetrator conducts the damaging activity to the injury of more purchasers or order placers, which is also referred to by the word usage of activity damaging purchasers, order placers. In making spot check type of checks one occasion of false weighing, etc. can also be the basis of establishing the damaging of purchasers, if the case's circumstances prove that damaging activity is being conducted, for example in case the scale is set up falsely, or when merchandise prepackaged in the store is short weighed or its quality harmed.

Those acts also belong under the process of activity which serves as basis for establishing the offense, for which the perpetrator has already been held responsible in disciplinary or rulebreaking procedures.

4. Regarding the manners of the committing activity: billing for higher than the justified amounts for individual items of merchandise qualifies as false calculation; also countervalue demanded for merchandise which was not served to the customer; mixing the same type but different quality merchandise and selling it at the price corresponding to the better quality constitutes degrading the quality of the merchandise sold; diluting the merchandise by adding foreign material, serving lower value merchandise as higher value merchandise.

Usurpation

To Paragraph 329.

1. With respect to the definite objects of commission, usurpation in part

declares such damage causing behaviors to be offenses which the perpetrator creates by his misleading behavior. Thus in this part of the fact situation the fact situation elements of swindle can be recognized (point a)); and on the other hand it is such behavior by which the perpetrator makes fulfillment of his obligation dependent on compensation. In this part of the fact situation (point b)) the fact situation elements of bribery can be recognized.

Placing the independent fact situation among offenses against property is justified by the fact that the fact situation protects intellectual creations etc. of property value.

2. The act defined in point a) is committed on someone else's intellectual creation, invention, innovation or industrial sample.

In civil law the invention, patented invention and innovation also are intellectual creations. Since the fact situation also separately emphasizes the invention and innovation, the other intellectual products must be understood under intellectual creations, for example the protected industrial sample.

Further, in this fact situation the industrial, scientific or artistic creations which have property value and are under protection of author's rights are intellectual creations. Thus for example the literary works (scientific, fiction, professional literature, advertising, etc.), drama, musical play, dance play or silent play, musical work, radio and television play, movie creation, creations produced by means of drawing, painting, sculpture, etc.,

plans of architectural creations, technical establishments, industrial art creations, artistic photographs, etc. (see law No III. of the year 1969 and order No 9/1969. (XII. 29.) MM [Ministry of Culture]).

Inventions are all new solutions of technical character representing progress, which can be used in practice (law No II. of the year 1969, Paragraph 1.).

Innovation is that technical and work or plant organizational solution which a) is relatively new, b) using it involves profitable results for the enterprise, c) does not belong among its proposer's job area obligations, or even if it is his obligation at the place of work, it qualifies as significant creative activity, d) does not result in decline of quality which harm the consumers' interests (order No 38/1974. (X. 30.) MT, Paragraph 2.).

A sample of shaping or illustration referring to or applicable on[to] the external form of some industrial item must be understood by industrial sample. The sample may concern special or unique shaping of the industrial item's plane surface just as well as its convex or concave shaping, or industrial item prepared by combining such shapes, and plastic shapings.

From the viewpoint of penal law protection also the invention, innovation and industrial sample must be separated from the trade mark, brand markings and other business signs. That is, the formers are personal intellectual creations or products of personal ideas, inventiveness. The latter protect the result of industrial or trade activity, the good fame of a given enterprise, plant or

factory. The fact situation contained in Paragraph 296. (false product marking) protects the acts [sic] which harm (endanger) these objects.

3. The fact situation defined in point b) provides protection to the intellectual creations etc. in another direction. The practical experience is that some people endeavor to insure income deriving from protected intellectual creations for themselves -- or at least to share in it -- by abusing their area of work. Some people use the situation of having the authority to render an opinion with respect to the invention etc., or to introduce it at the enterprise for example, to make favorable case handling dependant on the inventor, innovator etc. giving them a share of the fee, profit, gains.

Thus the act's perpetrator -- according to the above -- can only be a person who fills a definite work assignment.

Credit Violation

To Paragraph 300.

1. With increasing manufacture of durable consumer goods more and more such products are being placed into trade circulation. Increase in the standard of living not only increased the demand for these items but also created the demand that they should be able to be bought with partial payments under the circumstances of adequate earning conditions, that is, through the use of credit.

In this situation credit -- loan -- is used by more and more persons. There

are those, though in small numbers, who endeavor to obtain illegal profit for themselves by disposing of coverage which serves to insure the credit, the property item encumbered for fulfillment, and by this frustrate the creditor in satisfying his demand from the coverage.

According to the Proposal the discussed behavior as well similar behaviors committed by economic operating organs harm the creditor's property interests, therefore the fact situation of credit violation was placed among the offenses against property.

Complaint [Private Complaint]

To Paragraph 331.

In some offenses against property in case of relationship tie between the injured party and the perpetrator the injured party's consideration demands that it should not be sufficient to commence penal proceedings if the authorities obtain knowledge of the offense, but the injured party should express his wish concerning punishing the perpetrator.

According to the Proposal if the perpetrator is related to the injured party, theft, embezzlement, swindle, unfaithful management, unauthorized misappropriation, receiving stolen goods as well arbitrary taking of a vehicle which cause damage to personal property can be prosecuted only upon private complaint. Paragraph 137. point 5. provides guidance for judging the relationship connection.

Report [complaint] filed with the authorities against an unknown perpetrator does not substitute the private complaint.

Active Repentance

To Paragraph 332.

1. The legal policy principle which runs through the Proposal, that it insures immunity from punishment, or the possibility of unlimited mitigation in order to avoid greater damages in case of such behaviors which repair or lessen the harmful consequences to society of already committed offenses.

And since according to Paragraph 87. section (4) the possibility of unlimited mitigation exists only if the law contains such order, expressed orders had to be given for each such case when society's protection requires the effectuation of the legal policy principle in question.

Paragraph 332. contains this order in the area of offenses against property.

2. The justification in several places refers to how large the significance of damage caused by an offense against property is. With the institution of active repentance the Proposal primarily wishes to insure that the damage suffered by the injured party during the offense should be recovered, or decreased. But extension of such benefit is not justified if the perpetrator during the course of committing the offense against property also injures another legal object, or if the offense's character excludes active repentance.

Therefore the Proposal lists those offenses against property in connection with which active repentance can be performed, and excludes robbery, stripping and extortion, as well as causing damage to consumers, usurpation and credit violation. The listing given in Paragraph 332. is exhaustive.

In the lack of orders to the contrary, active repentance is valid for the base as well as the qualified cases of the listed offenses. Since active repentance serves to protect society in more directions, and since the degrees of dangerousness of the specifically occurring offenses to society — taking their qualifications also into consideration — are very different, the Proposal does not define any special excluding circumstances in the fact situation of Paragraph 332.

4. A further reason for creating the institution of active repentance is that it also serves society's protection by making it possible to discover the offense as early as possible. This goal is served by that fact situation element that the perpetrator must report the offense to the authorities or to the injured party when it has not yet been discovered. Reporting means revealing the act and the perpetrator's person. Thus the yet unknown perpetrator's reporting himself after the offense is discovered does not qualify as active repentance even if he has made reimbursement for the damage.

Thus it can be achieved by the institution of active repentance that such act with a larger object, possibly carried out by many perpetrators can also be discovered in time the discovery of which is very difficult due also to the

fact situation branching out in many directions, and not among the last to the number of perpetrators.

Considering such acts the perpetrator's responsibility connected to making reparations for the damage develops differently from the general situation. That is, the perpetrator must reimburse for the damage he caused by the offense -- prior to discovering the offense --, or must do everything what can be expected of him in the interest of making reparation for the damage.

In case of individual commission active repentance can be established if the perpetrator makes reimbursement for the entire damage, and only exceptionally -- with respect to the commission's circumstances, motivation, the perpetrator's earnings, income, property circumstances -- is it justified to use it if he does everything what can be expected of him in the interest of making reimbursement for the damage, for example besides making reimbursement for a part of the damage, he provides security for the remaining amount. In that case when more perpetrators cause larger damage, the active repentance must stand in harmony with the perpetrator's activity exerted during the course of accomplishing the offense and with the amount of damage thus generated.

5. All of the case's circumstances, particularly the amount of reimbursed damage provide guidance in the question of whether in the specific case omission or unlimited mitigation of the punishment is justified. If the rule of active repentance cannot be applied, the perpetrator's activity connected with making reimbursement for the damage will be evaluable as mitigating circumstance.

Interpretive Regulations

To Paragraph 333.

1. The reasons connected with defining the concept of item object; thing are contained in the justification to Paragraph 316., and the reasons connected with the concept of damage are in the justification to the chapter.

2. The Proposal orders negligent management (Paragraph 320.) and careless damaging (Paragraph 324. section (6)) to be punished only if those are committed to the harm of social property. The Ptk does not use the expression of social property, therefore legal definition of this concept is necessary.

The Proposal provides protection to social property by penal law. In harmony with the rules of civil law, the subjects of social property are the state, the cooperative, the social organization and the association.

The penal law protects the state's and cooperatives' property as social property, its subjects and objects are defined in the Ptk (Ptk Paragraph 89., Paragraph 90., Paragraphs 172 through 176., Paragraphs 182. through 184.). According to the Ptk's Paragraph 183. the rules of cooperative property laws must also be applied to the property relationships of the social organizations and associations.

But the civil law concept of property is broader than that of ownership, it includes the sum of some person's property-related rights and obligations.

Thus the Proposal extends penal law protection also to those property items to which the state, cooperative, social organization and association have no ownership rights, but are in their use, under their management or control. Therefore these property items must be considered parts of society's property also if they are in personal or private ownership.

Social property of other socialist countries on the Hungarian People's Republic's territory must also be considered social property.

3. The Proposal's Paragraph 137. point 13. defines the concept of special repeat offender. As it is contained in the justification attached to this point, developing the circle of offenses similar in character from the viewpoint of being a special repeat offender awaits for the judicial practice. Yet the Proposal makes an exception in offenses against property. There are reasons of legality for this, involving guarantees. That is, it depends on the judging of this question whether theft, embezzlement, swindle, damaging and receiving stolen property committed for rulebreaking values qualify as rulebreakings or offenses.

The Proposal considers the offenses defined in this Chapter to be of similar character with each other.

Chapter XIX.

Crimes Against the Military [National Defense] Obligation

Law No I. of the year 1976. concerning national defense defines the citizens'

national defense obligations. This Chapter of the Proposal declares the guilty behaviors of those who sin against these to be offenses.

Violation of the Obligation to Report for Service

To Paragraph 334.

1. Being called up for military service takes place with a call-up or reporting order, which the person obligated for military service is required to satisfy without delay (law No I. of the year 1976, Paragraph 27.). It cannot be defined in the legal fact situation when the reporting for service is done with delay. In case of fulfillment with delay, it can be decided after examining all of the case's circumstances whether the delay can or cannot be considered to be violation of the reporting obligation. Considering the importance of the protected interest, careless commission must also be punished.

2. In time of war increased social interest attaches to fulfilling the reporting obligation, because the danger of failure is greater. Therefore at such time the perpetrator must be threatened with more severe punishment.

Evading Military Service

To Paragraph 335.

1. Failure to fulfill the obligation prescribed of a person with military obligation can take place by failing to fulfill the reporting (appearing, registration) obligation or the obligation to report for service. In such

behaviors committed with the purpose of evading military service the offense becomes complete regardless of whether the result was achieved. The purpose can be permanent or temporary evasion. In intent aimed at permanent evasion the act's dangerousness to society is greater, which must be valued during the course of meting out the punishment.

2. The act described in section (1) is a so-called pure failure fact situation. But the person with military obligation can also exhibit such active behavior in the interest of evasion which -- with respect to its consequence -- achieves the desired goal through a measure taken by the respective military organ. Criminal behaviors involving such trickery must be punished more severely. From this viewpoint it is indifferent whether the purpose was evasion of the service obligation in general or only to cause such a change affecting the suitability for service which affords the opportunity to make use [of the person] at a lower value compared to the original -- from health or other viewpoints. The result does not have to occur in these cases either, the offense has already taken place with the intentional performance of such activity.

3. A typical method of commission is that the person with military obligation wishes to evade his military service obligation by going abroad without permission or lastingly remains abroad. In this case the prohibited border crossing according to Paragraph 217, section (1) or evading the rules of travel abroad and staying abroad melts into evasion of the military service. Inasmuch as some qualified case of the offense defined in Paragraph 217.

exists, there is an opportunity to mete out agglomerate punishment.

4. In time of war all forms of evasion represent greater danger to society, therefore at such time the offense's perpetrator must be threatened with more severe punishment.

Refusal to Perform Military Service

To Paragraph 336.

It can happen that a person with military obligation by referring to some reason (for example one of conscience), or without this refuses to fulfill the military service obligation. Persons committing such act must also be threatened with the same punishment as the ones who desire to extricate themselves from fulfilling the military service obligation in another manner. The offense -- as the other acts of evasion -- can take place only in connection with specific obligation. The person with military obligation has the burden of service obligation on him only after receiving the call-up or reporting order, thus refusal of this can take place only after this.

Failure to Register as Required

To Paragraph 337.

Unintentional failure of the registering and reporting obligation (law No I. of the year 1976., Paragraph 25., Paragraph 30. sec. (1) point a)) has such significance only in time of war that the person with military obligation

should be threatened with punishment for it. Of the two types of obligations the one of reporting is more significant because this also includes the obligation to report in person for the purpose of medical examination or medical treatment, or for drafting purposes, which have a direct effect on the coming military service. The difference between the penalty items expresses this. In order for the offense to take place, occurrence of the result is not necessary.

Obstructing the Fulfillment of Military Obligation

To Paragraph 338.

1. The Proposal orders the accomplishment of the offenses against the national defense obligation designated in Paragraphs 334., 335. and 337. by a person other than the person with military obligation to be punished independently. The behavior of such person must in all cases be result-oriented, that is it must be aimed at frustrating the fulfillment of the obligation of the person with military obligation. Occurrence of result is not necessary.

2. In the majority of cases the perpetrator of this offense could also be held responsible as participant in the crime with the person with military obligation. But it can happen that the person with military obligation commits no offense, because the culprit carries out the criminal behavior without his knowledge or contrary to his wishes. This is why these acts must be regulated as independent offenses. The offense is accomplished in connection with only such person with military obligation who has the burden of specific military obligation.

Violation of Civil Defense Obligation

To Paragraph 339.

Among the civil defense obligations (law No I. of the year 1976, Paragraph 47. sec. (4)) the Proposal orders failure to perform civil defense service in the time of war to be punished. Failure to perform other civil defense obligations and failure to perform the civil defense service in peacetime does not hide such great danger in itself for which the obligated person should be threatened with punishment.

But in time of war violation of the civil defense obligation can cause even severe danger, therefore at such time the perpetrator owes greater responsibility. The careless perpetrator must also be punished, but only when the careless failure causes severe danger.

Violation of the National Defense Labor Obligation

To Paragraph 340.

National defense labor obligation exists only in time of war (law No I. of the year 1976, Paragraph 48. sec. (1)), therefore this offense also can be accomplished only in time of war (Paragraph 137. point 3.). Not all failures of a person obligated to perform national defense labor represents such danger that it should be threatened with penal law punishment. Being absent or violating the work obligation in another manner are offenses only if the failure to

perform results in severe violation of the obligation. Severe violation can be established only by taking all of the case's circumstances into consideration; this cannot be defined in legal fact situation. Remaining absent from performing important work, or a series of refusals to perform the work obligation may mean severe violation of the obligation.

Violation of the Obligation to Provide Supplies

To Paragraph 341.

The economic obligations which can be ordered due to national defense interests are defined in chapter XIV. of law No I. of the year 1976. If in time of war someone severely violates or eludes this obligation of his, he endangers the national defense interests to such extent that it must be punished. Thus the offense occurs only in time of war and if the violation of obligation is severe. This can be determined by weighing all of the case's circumstances. The situation is the same in connection with the national defense obligations to provide materials (law No I. of the year 1976, chapter XV.) also. These supply obligations can refer to real estate as well as to non-real estate items alike.

Active Repentance

To Paragraph 342.

Significant social interest attaches to fulfilling the military obligation. Therefore in those cases when the failure can still be made up, it is

expeditions to provide incentives to do so. Therefore the Proposal provides the possibility for mitigating without limit the punishment in those cases when belatedly the perpetrator voluntarily fulfills his missed obligation. This active repentance can be composed of voluntary reporting, belated fulfillment, or averting the consequence. Applying the order concerning unlimited mitigation is justified if the missed obligation can still be made up for by the active repentance, and if such situation has not occurred when the possibility of this is excluded.

Chapter XX.

Military Offenses

In this Chapter the Proposal summarizes the offenses which injure or endanger the service order of armed forces and armed bodies. From this special legal object follows that only a soldier can commit the military offenses as culprit. But it is unnecessary to separately designate this special subject in the legal fact situations.

The Proposal summarizes the military offenses in four Titles. Title I. contains the service offenses, Title II. insubordination, Title III. the supervisory offenses and Title IV. the offenses which endanger the fighting ability.

Title I.

Service Offenses

Among the service offenses the Proposal orders the persons who do wrong against the military service obligation and who violate the obligations connected with the regulated order of various specific services to be punished.

The military service obligation extends over all soldiers in the actual services. The person evading this can be a soldier performing service on the basis of military obligation, as well as professional or continuing service [reenlisted] soldier.

Persons who do wrong against the specific service tasks can be soldiers in any assignment [rank]. Their act is according to the fact situation if the general or specific rules concerning performance of the service are violated.

Desertion [Escape]

To Paragraph 343.

1. Desertion is a purpose-oriented offense. The purpose must be aimed at illegally interrupting the service performed by the soldier. The committing behavior can be abandonment of the place of service as well as remaining away from it in an unauthorized manner. Place of service must be understood to mean that place where the soldier is required or authorized to be on the basis of his superiors' order, that is, where he is under the authority of his superiors.

The act's dangerousness to society is greater if it is committed under the qualifying circumstances listed in section (2). Therefore at such time the punishment is more severe. Under the military service conditions commission with arms has greater significance. Participation of three or more soldiers must be understood by commission in group. In commission by taking advantage of the service in general the performing of the concrete service (for example guard [patrol] service) performed at the time of committing the desertion is also discontinued. Commission during the performance of an important service affects the interests of service more severely, but what is to be considered important service can be decided only on the basis of all of the case's circumstances. The violence committed against a person in the interest of desertion is usually directed against the guard or other service official.

2. Section (3) contains a complex fact situation. It includes the prohibited border crossing regulated in Paragraph 217., or elusion of the rules of travel abroad and staying abroad, if it is accomplished by a soldier for the purpose of extricating himself from under the service obligation. From this follows that in such case the opportunity is not there to establish agglomeration. But if the soldier's prohibited crossing of the border takes place without the purpose of desertion, the offense described in Paragraph 217. can be determined against him also, possibly in agglomeration with arbitrary departure.

The weight of desertion significantly increases in the time of war, and

its dangerousness to society is also outstanding if escape abroad is committed in the manner defined in section (2) points a) through c). Thus such perpetrators must also be threatened with the most severe punishment.

Preparation aimed at desertion must also be threatened with punishment suitable for the act's weight if the perpetrator plans to desert abroad or to do it in the manner described in section (2).

Considering that significant social interest attaches to continuous fulfillment of the military service, it is expeditious to insure unlimited mitigation of the penalty for the case if the perpetrator voluntarily terminates the illegal condition and reports.

Failure to Make a Report [to the authorities, about someone]

To Paragraph 344.

Making reports is a general obligation of a soldier. The soldier must be threatened with more severe penalty than the general penalty if he does not make a report about preparation to desert abroad. Similarly to failing in the other report making obligations, the relation cannot be punished for this offense. Inasmuch as a civilian person does not make a report about a soldier's preparatory activity aimed at escaping abroad, he is to be punished according to Paragraph 219.

Arbitrary Departure [Absence Without Leave]

To Paragraph 345.

The behaviors which commit arbitrary departure and desertion are partially identical. But in arbitrary departure the intent of extricating one's self from under the service is missing and it is accomplished if absence from the place of service exceeds the time duration of 24 hours. In case the soldier's intention is aimed at an absence exceeding 24 hours, but the act is interrupted before this, establishment of attempt may take place.

Absence from the place of service for a longer period of time exerts a greater effect upon the service and discipline, and therefore arbitrary absence beyond six days must be punished more severely. Punishment for both the basic and the qualified case is more severe in time of war, because this is in proportion with the increased dangerousness to society.

In case of arbitrary absence of shorter than 24 hours it is justified to hold the soldier responsible by penal law only if he has already been disciplined for this same offense on two occasions. The earlier disciplinary acts can be considered only if they are still in effect.

Evasion of Service

To Paragraph 346.

A soldier performing actual service can cause it by intentional behavior that

he becomes unsuitable to perform military service. The behavior's purpose can be temporary or permanent extrication. Various committing behaviors can be exhibited for this purpose; the legal fact situation summarizes these. Punishment of the perpetrator of wrongful behavior accomplished for the purpose of permanent extrication conforms to the penalty item of desertion, punishment of the perpetrator of activity aimed at temporary extrication to the punishment of the person who commits arbitrary departure.

Refusal to Serve

To Paragraph 347.

In Paragraph 336. the Proposal orders that person with military obligation to be punished who refuses to perform military service. Refusal to serve can involve the fulfillment of military obligation in general or one specific service. The legal fact situation written here corresponds to this, application of which takes place in the case of a soldier perpetrator. The penalty item is identical with the penalty item of desertion.

Violation of Duties While in Service

To Paragraph 348.

Within the general service obligation the soldier must perform such specific service tasks to which prescribed rules refer. These cannot be listed in detail in the Proposal, therefore -- besides the collective concept of

readiness service — only the guard service and watch service are mentioned specifically in the legal fact situation. Thus in connection with all services the common criterium is that there should be detailed, precisely defined orders for performing it. The services thus organized are so significant that those who violate the obligations concerning their performance must be threatened with penal law punishment. But the general rule is valid here also: the violation of obligation must contain such extent of dangerousness to society which is the precondition of an offense taking place. If this is missing, only disciplinary misdemeanor occurred.

The different services have different importance, therefore the given violation of obligation may involve different weights of danger. This is why that perpetrator must be threatened more severely whose violation of obligation involves the danger of significant disadvantage to the service, or who commits the offense in a battle situation and particularly large disadvantage derives from it.

Careless commission manifests itself only in the qualified cases with such weight that it must be considered an offense. Otherwise merely a disciplinary misdemeanor takes place.

Evasion of Carrying Out a Service Assignment

To Paragraph 349.

Within the continuous performance of service there are such important service

assignments the performance of which must be aided also with the tools of penal law. The Proposal cannot list the important services; what can be considered that can be decided only in the specific case. But it is obvious that this circle is broader than the services listed in Paragraph 348. The deed takes place only in the case of intentional behavior.

Violation of the Requirement to Report

To Paragraph 350.

Serious interests attach to the soldiers fully perform their reporting obligations. This means that the reporting must take place on time and correspond to reality. If violation of the obligation aimed at this occurs in an important service matter, the degree of dangerousness to society requires penal law punishment. The perpetrator must be threatened with more severe punishment if significant disadvantage derives to the service from the offense.

Abuse of Service

To Paragraph 351.

The abuse of service is a military offense corresponding to abuse of office in Paragraph 225. During military service the service assignment or service situation insures such opportunities to certain persons which can also be abused. If the purpose of this abuse is to cause illegal disadvantage or to obtain illegal advantage, an offense takes place. This fact situation differs

from the fact situation of abuse of office to the extent that this is committed by soldiers and that by official persons, and further, in the former the committing behavior is violation of obligation, exceeding the circle of authority, or other abuse of of the official situation, while in the latter it is the abuse of the service authority or situation. Considering that on occasion the soldier may also perform national governmental tasks, by his abuse accomplished within this sphere he also commits the offense written in Paragraph 225. If significant disadvantage derives from the act, the perpetrator is to be punished more severely.

In the Proposal the abuse of service is a supplementary rule, which does not substitute for it if the act accomplishes the fact situation of some more severe offense. In case of offense of the same weight the special fact situation must be established.

Title II.

Insubordination

The Proposal orders violation of subordination relationship between superior and subordinate by the subordinate as insubordination. Subordination is the basis of the service order and discipline. It expresses the superior's right to give orders and the subordinate's obligation to carry it out. It includes that requirement deriving from the service order that obedience must be exhibited towards service superiority, service authority must be held in respect.

Insubordination may be directed against the superior's will, person or respect. The Proposal extends penal law protection to the person with higher rank, the guard and other service official also, if it is necessary in the interest of service order.

Mutiny

To Paragraph 352.

Mutiny is the most severe insubordination. Its perpetrators defy the service order and discipline openly, recognizably by others. By this they extricate themselves from performing the service tasks, indeed even hinder others in doing so, possibly engage even a major force to overcome the mutiny. Commission in group means joint action of at least three soldiers with the same intention. Defiance can take place in active or passive form, and occurrence of significant disturbance of the service tasks is necessary to fulfill the fact situation.

Mutiny carries outstanding danger to society. Its consequence can be temporary crippling of the battle capability, usability according to design of the entire formation. According to this, the penalty items are severe. Since the instigator, organizer and leader have particularly large roles, they must be threatened accordingly.

2. During the mutiny, in connection with it other offenses may also take place.

The Proposal makes some of these fact situation elements in qualified cases, and thus melts them into the mutiny. This is why agglomeration is not established if during the mutiny violence is used against the superior or someone else, or death is caused. Corresponding to the objective weight of mutiny, the preparation aimed at it must also be punished. In time of war the penalty items are significantly more severe, considering the increased dangerousness.

3. Since significant interests attach to it that those participating in the mutiny should give up the wrongful behavior, the Proposal insures the opportunity of unlimited mitigation in the cases of those who discontinue the action before severe consequences occur or when being called upon to do so.

Failure to Prevent Mutiny

To Paragraph 353.

From the soldier's general obligations follows that he must prevent mutiny or its preparation, or report it. Failure to do this calls for punishment. If the violation of obligation is accomplished by a superior or service authority, the act qualifies according to Paragraphs 348. or 361.

Refusal to Carry Out Orders

To Paragraph 354.

1. The order is the basic medium of service management. Under military service conditions the superior has the right to give orders and the subordinate is

obligated to carry them out. The order can be given verbally, in writing or by signal. Contentually the order is directed at activity or restraint from it connected with the service. The Proposal provides penal law protection to these so-called service orders.

The service interests require that orders given by guards, persons performing watch service and other service media must also be considered service orders by the judicial practice, if others are required to carry them out. The general orders contained in the statutes and such comprehensive orders coming from superiors which are addressed to a large number of people, thus the orders of general effect, are not included in this concept.

2. Careless nonfulfillment of an order reaches such degree of dangerousness to society only in the qualified cases when it must be declared an offense, otherwise it is only a disciplinary misdemeanor even in case it is committed in group. In case it is intentional, commission in group must be punished more severely and the danger is greater when committed in an insulting manner or involving the danger of significant disadvantage.

Particularly severe harm may occur due to disobedience to a battle order. Therefore at such time the perpetrator must be threatened with the most severe punishment. But exclusively the order issued in battle situation, aimed at specific battle activity can be understood by battle order.

Violence Against Superior or Against Service Personnel

To Paragraph 355.

1. Under the military living conditions the Proposal provides appropriate protection not only for the superior's will but also to the superior's person. The circle of passive subjects must be interpreted more broadly in this connection also. The person of higher rank, the guard and all other service media are to be considered the same as a superior if violence etc. is committed against them during the course of or because of performance of service.

The committing behavior can be application of violence, threatening with violence as well as resistance involving assault and battery. During the course of exerting violence against the superior or service personnel the lawbreaking behavior may also extend over other things. Due to the frequency of this it is expedient to combine disobedience to the order, some more severe cases of bodily harm and intentional manslaughter with violence against the superior or service personnel. At such time establishment of agglomeration does not take place.

2. The Proposal specifies higher penalty items for the qualified cases, due to increased dangerousness to society. It threatens the soldier with the most severe punishment if the offense also accomplished intentional manslaughter, or if he committed it in battle situation.

3. In the interest of the injured party anyone can take a stand against the

person using violence, this is also the responsibility of a soldier. It can happen that soldiers are ordered out to prevent the violence, to protect the superior or service personnel. The person who has thus been ordered out and the person taking a stand voluntarily rightfully demand identical penal law protection with the person in whose protection they act. The Proposal insures this in section (6).

Violation of Respect for Service Authority

To Paragraph 356.

Besides protecting the person of the superior and of the service personnel, the Proposal also places emphasis on insuring the service respect for them. Attack directed against this falls under milder penal law judging. Violation of the superior's service authority must be declared an offense when it is done in the presence of another or in a rude manner. And an attack carried out in this manner against the respect of a superior, guard or other service personnel qualifies as offense only if these persons were on duty when the wrongful behavior was exhibited. Cases judged more mildly than this qualify as disciplinary misdemeanors. In contrast with this it is increased danger to the society if violation of the service authority is accomplished in the presence of more soldiers or otherwise in public, therefore at such time the perpetrator must be threatened with more severe punishment.

Instigation

To Paragraph 357.

Inciting dissatisfaction among the soldiers directly affects the service order and discipline. Therefore a soldier exhibiting such behavior must be punished. Intentional activity is necessary to fulfill the fact situation's conditions, and this must be directed at at least two soldiers. Dangerousness to society reaching the level of offense can be determined if the act is suitable for triggering antipathy in other soldiers, undermine their readiness to obey orders.

The act's dangerousness is increased if instigation is carried out while on duty, or if significant disadvantage derives from it. At such time the penalty item is appropriately higher.

Title III.

Supervisory Offenses

The human dignity and other legal interests of subordinates must be protected with the tools of penal law also. The Proposal threatens the superior with punishment if he insults his subordinate, abuses his supervisory authority, fails in his performance of supervisory care or taking measures, or control. From the viewpoint of supervisory obligations the occupational supervisor is considered the same way as the service supervisor.

Insulting the Subordinate

To Paragraph 358.

Under military service conditions not only the subordinates' obligations are regulated. The superior is also required to treat the subordinate in the prescribed manner, must not insult his human dignity, must not cause him bodily or emotional suffering.

Infuring the subordinate's human dignity is a broader concept than injury to honor. It can take place by using an unpermitted disciplinary tool, by the degrading manner of service contact and also by other such acts against which the subordinate is temporarily defenseless due to the service dependency.

Injury of the subordinate's human dignity by the superior is disciplinary misdemeanor. The act's dangerousness to society reaches the level of offense if it is done in the presence of another or in a conspicuously rude manner. Its weight increases in the cases of the qualifying circumstances listed in sections (2) and (3). Therefore in these cases the perpetrator must be punished more severely.

Abuse of Supervisory Authority

To Paragraph 359.

The military regulations precisely define the limits of supervisory authority. Exceeding these can be disciplinary misdemeanor, as well as offense included in Paragraph 359. or other offense. The reason for this is that the weights of

behaviors included in the legal fact situation of abuse of supervisory authority may significantly differ from each other and may lead to various results. The act's specific dangerousness to society can be determined only by taking all of the case's circumstances into consideration. On the basis of this it is possible that in the given case only disciplinary misdemeanor took place, but it can also happen that the act must be qualified as offense which is threatened with more severe punishment.

Failure to Exercise Supervisory Care

To Paragraph 360.

The superior's basic responsibility is to take care of his subordinates. Care includes all respects of providing for the subordinates, as well as protecting their lives and bodily integrities. Besides supplying food, clothing, weapons and other equipment the appropriate service orders define the extent and method of housing and health care. The necessary measure to defend against and rescue from threatening danger is partly prescribed activity, partly such measure which derives from the general supervisory obligations. Even in time of war it does not decrease the act's dangerousness to society that fulfillment of military service involves the acceptance of greater sacrifices and increased danger.

The behavior according to section (1) is an act of endangerment, but it also includes the consequence if it does not involve significant disadvantage. The occurrence of significant disadvantage increases the act's dangerousness to

society to such an extent that the perpetrator must be threatened with significantly more severe punishment, and with such result even the careless commission must be declared to be an offense.

Failure to Take Supervisory Measures

To Paragraph 361.

It is also among the superior's responsibilities that he should require his subordinates to carry out their obligations, in case of need to force them to carry them out. It is his task to take those measures with which it can be prevented that the subordinates commit disciplinary violations or offenses. In case the subordinate commits a rule violation, he is to be held responsible. It is the superior's task to take measures to overcome disturbances which threaten the service order, discipline or public tranquility. Failure to perform in connection with these is an offense even without any results which may occur.

The act qualifies more severely if it leads to such result which involves significant disadvantage to the service, discipline or public safety. At such time the careless behavior must also be threatened with punishment.

Failure to Supervise

To Paragraph 362.

Intentional violation of the supervisory responsibility defined in the service orders is a supervisory offense, if it involves significant disadvantage to

the service or discipline. Failure to perform without consequences is only a disciplinary misdemeanor.

Failure to supervise the subordinates may also involve particularly great disadvantage. At such time the superior must be punished more severely. In case particularly great disadvantage occurs the careless superior's behavior also qualifies as offense.

Title IV.

Offenses Endangering the Fighting Ability

Constant insuring of high level of fighting ability is a condition that the armed forces and bodies should always be able to satisfy their basic purpose of existence. Within the framework of this Title the Proposal summarizes those offenses which are aimed against the battle ability of the armed forces. The attack on battle ability may be aimed against its moral as well as material foundations.

Endangerment of Combat Readiness

To Paragraph 363.

The basic condition of combat readiness is insuring the necessary war materials and using it as per design. Failure to take care of supplying war materials is a violation of the service obligation, with which the perpetrator endangers the formation's combat readiness. Only a commander or soldier in a special assignment can be held responsible for such violation of obligation. Removal

of the weaponry from its designated use can lead to similar result. Any soldier can be punished for this. The offense has already been accomplished by direct endangerment of the combat readiness.

The act's dangerousness to society significantly increases if particularly large disadvantage derives from it for the service. With such result the perpetrator in time of war must be threatened with the most severe punishment. Considering the large degree of dangerousness the careless commission must also be declared an offense.

Violation of Commanding Officer's Responsibility

To Paragraph 364.

Under battle circumstances the armed forces and bodies generally solve their tasks in group operations. These groups are headed by commanding officers. The commanding officer is a person invested with extraordinary authority, high degree of rights to issue orders, who personally answers for the battle task's success. He must perform his assignment according to the prescriptions of regulations and other orders. Inasmuch as he does not fulfill his obligations as commanding officer in the manner written in the legal fact situation, he must be punished with the punishment there written.

Evasion of Fulfilling the Combat Responsibility

To Paragraph 365.

The regulations and other orders prescribe the combat responsibilities of not

only the commanding officer but also of every soldier. The Proposal orders violation of these responsibilities to be punished if the perpetrator extricates himself from some combat assignment or activity in connection with it. The most severe penalty item is in proportion with the act's outstanding dangerousness to society.

According to point d) a soldier's falling as prisoner [of war] is an offense if it occurs intentionally. The motivation for getting captured voluntarily is cowardice or halfheartedness. If such soldier gives himself up who due to his illness, wound etc. is deprived of the possibility to exert resistance against the enemy, he does not owe penal law responsibility.

Sabotaging the Combat Spirit

To Paragraph 366.

In time of war it has particular significance that the soldiers' moral steadfastness and combat determination should remain fully intact. Therefore the person who attacks this must be threatened with punishment. Stirring up dissatisfaction, generating halfheartedness, or spreading alarming news can all alike be the committing behavior. Inasmuch as the result according to section (2) derives from the act, the perpetrator must be threatened with significantly more severe punishment.

Interpretive Regulation

To Paragraph 367.

The designation "military service" occurs in numerous legal fact situations of the Chapter concerning military offenses. But this must be understood to mean not only the service performed in the national armed forces. In the interest of uniform application of the law, Paragraph 367. provides interpretative orders for this concept. It states that as applied in Chapter XX. the service performed by a person defined in Paragraph 122. section (1) must also be understood to mean military service.

8584

CSO: 2500

END

END OF

FICHE

DATE FILMED

4 SEP 79

MB

